

BEFORE THE
ILLINOIS COMMERCE COMMISSION

NORTH COUNTY COMMUNICATIONS) DOCKET NO.
CORPORATION) 02-0147
-vs-)
VERIZON NORTH INC. and)
VERIZON SOUTH INC.)
Complaint pursuant to Sections)
13-514, 13-515 and 13-516 of the)
Public Utilities Act and 83 Ill.)
Admin. Code Part 766.)

Springfield, Illinois
November 12, 2003

Met, pursuant to notice, at 10:00 A.M.

BEFORE:

MR. WILLIAM SHOWTIS, Administrative Law Judge
MR. JOHN ALBERS, Administrative Law Judge

APPEARANCES:

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(Appearing on behalf of North County
Communications Corporation)

SULLIVAN REPORTING COMPANY, by
Carla J. Boehl, Reporter, CSR License #084-002710

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I N D E X

<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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PROCEEDINGS

JUDGE ALBERS: By the authority vested in me by the Illinois Commerce Commission, I now call Docket Number 02-0147. This docket was initiated by North County Communications Corporation against Verizon North, Inc., and Verizon South, Inc. The complainants seek relief under Sections 13-514, 13-515 and 13-516 of the Public Utilities Act, as well as under Illinois Administrative Code Part 766.

May I have the appearances for the record, please.

MR. DICKS: Joseph Dicks, the Law Office of Joseph G. Dicks, 750 B Street, Suite 2720, San Diego, California, appearing for North County Communications on application, permission granted by the Illinois Commerce Commission. I have with me my client representative of North County Communications Todd Lesser and designated expert Douglas Dawson. Thank you.

MR. ROONEY: Good morning, Your Honor. On behalf of Verizon North, Inc., and Verizon South, Inc., John Rooney and Sarah Naumer from the firm of

1 Sonnenschein, Nath and Rosenthal, 233 South Wacker
2 Drive, Suite 8000, Chicago, Illinois 60606.

3 JUDGE ALBERS: Thank you. Are there any others
4 wishing to enter an appearance? Let the record show
5 no response.

6 The purpose of today's hearing is to
7 address the prefiled testimony and the matters that
8 are up for this proceeding. Are there any
9 preliminary matters before we do that?

10 MR. DICKS: Only what we discussed off the
11 record maybe we should put on the record. And I
12 apologize if I step out of a procedural aspect here.
13 I don't mind being corrected. I don't know whether
14 it is necessary to stand or remain seated or
15 approach the witness or what not.

16 JUDGE SHOWTIS: You can remain seated if you
17 feel more comfortable sitting.

18 MR. DICKS: It makes no difference to me. I
19 just want to be able to follow protocol.

20 Primarily, we filed objections, evidentiary
21 objections, to the prefiled testimony. It was North
22 County Communications' intention that the objections

1 be considered by the Commission, not necessarily as
2 the witnesses are testifying. We have no objection
3 to the testimony being received subject to our
4 objections and ruling by the Commission either
5 during the hearing or post hearing.

6 In addition, as it was brought up earlier
7 by Judge Showtis, the presumption that we were going
8 to put our witnesses on first, we had intended
9 pursuant to Illinois Rule 2-1102, the examination of
10 adverse party or agent, to call witnesses who had
11 submitted pretrial testimony on behalf of Verizon
12 pursuant to that code section. There does not
13 appear to be any notice requirement or exceptions
14 for Commerce Commission trials. It's a common
15 practice in California and my research indicated in
16 Illinois that it was a common practice to be able to
17 call adverse parties as long as they were not
18 surprise witnesses. These are only witnesses that
19 Verizon has prepared prefiled testimony for, has
20 filed prepared testimony for. So that was our
21 intention in the proceedings this morning.

22 MR. ROONEY: Your Honors, thank you. Two

1 points. As to North County's objections to certain
2 of the testimony that has been prefiled and has been
3 standing with the Commission now since July 3, we
4 received -- and when I say we, there was an e-mail
5 sent by North County's counsel, I believe, to both
6 Your Honors and only to Sarah Naumer sometime well
7 after the close of business on Monday evening. It
8 was not served at least as I -- certainly the e-mail
9 was not served to the entire service list as what I
10 would normally anticipate to be proper protocol.

11 In any event, the document that has
12 objections to each of our three witnesses, aspects
13 of their testimony, was only received by us late
14 yesterday. And while I appreciate Mr. Dicks'
15 thought of having them ruled on sometime and not
16 delay the ongoing examination of witnesses during
17 the hearing, we certainly want an opportunity to
18 respond at some juncture. And, quite frankly, I
19 just don't know the procedure you want to address
20 for that. So (a) we would like the opportunity to
21 review these documents and (b) have the opportunity
22 to respond, depending on the way you want to proceed

1 procedurally.

2 With regard to the issue of the calling of
3 adverse witnesses, Your Honor, I believe that the
4 request that NCC is making is improper, both
5 procedurally and out of a fundamental fairness in
6 the manner in which we practice here at the
7 Commission. The purpose of scheduling prefiled
8 direct testimony, prefiled rebuttal testimony, is
9 so that everyone has a clear understanding of what
10 the case is and where the parties are going. NCC
11 has had two occasions now, in direct and rebuttal
12 testimony, to identify not only their direct
13 witnesses but at least provide notices of who they
14 would identify as a possible adverse witness. They
15 have not done so until we found out just before we
16 went on the record this morning.

17 I would be more than happy to provide case
18 law on this topic. I wasn't prepared for that, but
19 we do have case law and it is pertaining to another
20 proceeding before the ICC right now where the issue
21 of disclosure of adverse witnesses is central to the
22 case. And there is identification both -- this is

1 not circuit court; we are not here to conduct
2 surprise. That's why we go through this process of
3 disclosing in advance. Our witnesses' testimony is
4 what they are and they are limited to the scope of
5 that testimony. If in fact there are issues that
6 NCC wanted to explore through adverse testimony, two
7 things. One, they should have let us know well in
8 advance of on the eve of hearing and, secondly, that
9 would also give us the proper opportunity to prepare
10 witnesses for what they may expect. They are
11 expected to be cross-examined pursuant to the scope
12 of their testimony. And that is the manner in which
13 we have proceeded in this case.

14 So, Your Honors, certainly we have no
15 objection to the concept of calling the adverse
16 witnesses, but the manner and process of the
17 procedure in which it is done I think is critical.
18 And in this instance there is certainly no evidence
19 until this morning that that possibility was
20 arising. Thank you.

21 JUDGE ALBERS: Two questions, one with regard
22 to the objections you raised. Is there any

1 particular reason you waited until today or rather
2 Monday to raise those objections?

3 MR. DICKS: It was my understanding pursuant to
4 Illinois law that objections to testimony may be
5 leveled at any time up until the actual introduction
6 of testimony. And I didn't want to sit here and, as
7 things have gone, first object as testimony is being
8 offered. That seemed rather cumbersome. I was,
9 quite frankly, a little bit surprised by the motion
10 to strike. Normally a motion to strike is heard
11 after testimony is already received into evidence.
12 And so I worked as diligently as I could to get it
13 done before I got here to give everybody an idea of
14 where we are coming from but I didn't finish it
15 until sometime over the weekend. My secretary
16 prepared it and sent it out.

17 Quite frankly, I didn't know how else to --
18 I mean, I suppose I could have gotten it done
19 earlier before the time, but again I was somewhat
20 surprised by the motion to strike because I thought
21 that was after the testimony was already received,
22 and so I just prepared my objections as quickly as I

1 could and got them out as fast as I could. Again
2 not being familiar with how it is done procedurally
3 here, I thought under the basic rules that the
4 objections could be heard any time until the
5 testimony was actually received.

6 JUDGE ALBERS: Second question. Who exactly
7 did you want to call as an adverse witness?

8 MR. DICKS: I was going to call Dianne McKernan
9 and Ms. Allison and examine them as adverse parties
10 only as to the topics and issues that were brought
11 up in their testimony. So there is no surprise. I
12 mean, again, I don't mean to step on any procedural
13 toes. I did the research as best as I could, and
14 when I looked up the rules regarding examination of
15 adverse party or agent, there was no indication of
16 notice requirement, unless you were going to be
17 calling a surprise witness. I am not calling a
18 surprise witness. I am simply calling witnesses
19 they prepared to have here for trial this morning on
20 topics that were addressed in their prefiled
21 testimony.

22 So, again, if there is some procedural or

1 substantive law that I have transgressed, I
2 apologize, but I didn't see anything when I did my
3 research about it. These are people identified by
4 the opposing party that are prepared for trial and
5 it's in their testimony.

6 JUDGE ALBERS: If you are going to question
7 them on issues raised in the direct, why couldn't
8 you ask those questions under cross examination?

9 MR. DICKS: Well, I certainly could. The issue
10 is do I get to control how I want the evidence to
11 come in and the way I want to examine the witnesses
12 that I want to call. And I thought that was my
13 prerogative under Illinois's rules. If it is not,
14 then so be it. That's the way I read the rules.
15 And I thought I was permitted to proceed as I read
16 the order. Again, not having had any other cases
17 before the Commission, not finding any Commission
18 rules to the contrary, I was relying on the general
19 Illinois statutes.

20 JUDGE ALBERS: With regard to the issues you
21 raised with regard to the testimony of Verizon
22 witnesses, tomorrow you can prepare whatever

1 response you would like or give us whatever response
2 you would like with regard to those objections.

3 And as far as calling adverse witnesses, it
4 seems that by your own statements that you were
5 going to be questioning them on issues raised in
6 their own testimony, I don't see any reason, neither
7 of us see any reason, why you can't simply make the
8 same questions in your cross examination whenever
9 their witnesses are called. So we would rule that
10 you can call your witnesses first and then when
11 Verizon witnesses are called, you can cross them.

12 MR. DICKS: I understand.

13 JUDGE SHOWTIS: And Mr. Dicks is correct, there
14 is no limitation on when a motion to strike
15 testimony can be raised. I have been in numerous
16 hearings where the witness is on the stand and then
17 a motion to strike is orally made. However, since
18 this is somewhat extensive, I think it would be
19 unfair to preclude Verizon's counsel from being
20 given at least additional time, and I would prefer
21 that -- the ALJ's would prefer to dispense with the
22 objections before witnesses take the stand. So we

1 would intend to rule before the witnesses take the
2 stand. Hopefully, we can do that tomorrow.

3 MR. ROONEY: Your Honors, do you want us to be
4 prepared to address each one of the objections
5 individually? That's the only approach we can think
6 of to address it. It is rather voluminous.

7 JUDGE SHOWTIS: Well, maybe to speed it up if
8 you can try to group some. I think whatever
9 objections you have, I find it hard to believe that
10 there would be a specific objection to each question
11 that wouldn't pertain to some other question. So it
12 might help if you would just --

13 JUDGE ALBERS: To the extent that you can.

14 JUDGE SHOWTIS: To the extent that you can, if
15 there are objections to the -- responses to the
16 evidentiary objections that pertain to, say, 10 or
17 15 questions or answers, if you could group them for
18 us, I think that would speed things up.

19 JUDGE ALBERS: Were there any other preliminary
20 matters that either of you wanted to raise?

21 MR. DICKS: No, Your Honor.

22 JUDGE ALBERS: I had one rather minor one and

1 that was the motion for leave to file rebuttal
2 testimony exhibits filed November 7 by North County.
3 I don't think that's been ruled on. As I recall,
4 the rebuttal testimony was served on Verizon a day
5 or so later than Judge Showtis and I. So I think
6 you filed a motion to cover that.

7 MR. DICKS: Correct.

8 JUDGE ALBERS: Any objection to that motion?

9 MR. ROONEY: No.

10 JUDGE ALBERS: Hearing none, that motion is
11 granted.

12 Before we get started, in order to save a
13 few minutes why don't we swear in all those
14 testifying today at the same time. So if you think
15 you would be taking the stand today, please stand
16 and raise your right hand.

17 (Whereupon the Witnesses were duly
18 sworn by Judge Showtis.)

19 JUDGE ALBERS: All right, Mr. Dicks, if you
20 would like to call your first witness.

21 MR. DICKS: Yes, may I just ask procedurally, I
22 don't think Ms. Naumer and I covered this. There

1 was some discussion that this would not proceed the
2 way some other proceedings that I was involved in
3 happened, that we were simply going to call our
4 witness, ask them to adopt their prefiled testimony
5 and then pass cross examination. Is that --

6 JUDGE ALBERS: That's essentially it.

7 MR. DICKS: Then we are going to call
8 Mr. Lesser on behalf of North County Communications.

9 **TODD LESSER**

10 called as a Witness on behalf of North County
11 Communications Corporation, having been first duly
12 sworn, was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. DICKS:

15 **Q.** State your name and spell your last name for
16 the record, please.

17 **A.** I am Todd Lesser, L-E-S-S-E-R, and I am
18 President of North County Communications
19 Corporation.

20 **Q.** Mr. Lesser, you filed both direct and rebuttal
21 prefiled testimony in this case, have you not?

22 **A.** That is correct.

1 **Q.** And do you adopt that testimony as your own?

2 **A.** Yes, I do.

3 MR. DICKS: Your Honors, do you require
4 permission to approach the witness each time?

5 JUDGE ALBERS: It depends on what you are going
6 to do to the witness.

7 MR. DICKS: All I am going to do is prompt for
8 one correction. I am not going to harm anybody for
9 the two days, at least physically.

10 JUDGE ALBERS: Go ahead.

11 MR. DICKS:

12 **Q.** At the top of page 10 of your originally filed
13 testimony there was what I think was a typographical
14 error. Would you describe that for the Commission?

15 **A.** Yes. On line 2 on page 10, it starts off
16 "Whoever Dianne McKernan asks" and the next sentence
17 "I had reason to doubt the information I received.
18 The answers and the questions were clear." I had
19 meant to put in "I had no reason to doubt the
20 information I received."

21 **Q.** Would you read the entirety of the question at
22 issue and the answer as it should be read?

1 MR. ROONEY: Counsel, just for the sake -- for
2 whatever reasons our pagination did not square with
3 yours. You said page 10, line 2?

4 MR. DICKS: Page 10, line 2 of your originally
5 filed. And that's why I was going to have him read
6 the question and the answer so there was no mistake
7 even if the pagination was off.

8 MR. ROONEY: Thank you.

9 THE WITNESS: At the bottom of page 9,
10 Question, "Did you ever ask Charles
11 Bartholomew if he understood what she was saying?"

12 Answer, "No, I had no direct communications
13 with Charles Bartholomew at that time. Frankly, I
14 didn't know any of the people's titles or job
15 responsibilities on the e-mail that was forwarded to
16 me."

17 JUDGE ALBERS: Stop there. Make sure we can
18 find this.

19 MR. ROONEY: If we are off the record -- I
20 can't find 9, 10, 11.

21 JUDGE ALBERS: Off the record while we figure
22 this out.

1 (Whereupon there was
2 then had an
3 off-the-record
4 discussion.)

5 JUDGE ALBERS: Back on the record.

6 MR. DICKS:

7 **Q.** Start from the beginning, Mr. Lesser, nice and
8 slowly so that we don't lose the court reporter.

9 **A.** Starting on line 26,

10 Question, "Did you ask Charles Bartholomew
11 if he understood what she was saying?"

12 Answer, "No, I had no direct communication
13 with Charles Bartholomew at that time. Frankly, I
14 didn't know any of the people's titles or job
15 responsibilities on the e-mail that was forwarded to
16 me. There would have been no reason for me to
17 second-guess him or whoever Dianne McKernan asked.
18 I had no reason to doubt the information that I
19 received. The answers and the questions were very
20 clear."

21 MR. DICKS: Thank you. I ask that the direct
22 and rebuttal testimony of Mr. Lesser as prefiled and

1 as ruled upon in a subsequent motion by the
2 Commission be received along with the exhibits
3 identified therein that have not been subject to the
4 motion to strike.

5 JUDGE ALBERS: Before we hear any cross of
6 Mr. Lesser, there was one question I had regarding
7 the testimony submitted in response to our ruling
8 and that was in page 1 of Mr. Lesser's rebuttal.

9 MR. DICKS: Line, Your Honor?

10 JUDGE ALBERS: Line 27 beginning "My
11 interconnection." The ruling had indicated that
12 that language beginning with "My interconnection" be
13 stricken through page 2, line 2, ending "company."

14 MR. DICKS: And you are correct, Your Honor. I
15 just -- I don't know why it was not so stricken,
16 other than it was a rather hectic time when my
17 secretary was preparing this to get it out in time
18 for Your Honors because of the holiday. So can I
19 just line it out here?

20 JUDGE ALBERS: I would suggest that we take one
21 of the hard copies this morning and strike it out on
22 that and give it to the court reporter.

1 MR. DICKS: That would be fine, yes. From the
2 word "that."

3 MR. ROONEY: I thought it was from the word "my
4 interconnection."

5 JUDGE ALBERS: Yes, beginning page 1, line 27,
6 "My interconnection."

7 MR. DICKS: Got it. Through "company" on line
8 2 of the following page?

9 JUDGE ALBERS: Yes, "Verizon Company."

10 MR. DICKS: Thank you, and I apologize.

11 JUDGE ALBERS: That's all right.

12 MR. ROONEY: Your Honors, I just have one
13 procedural question with regard to Mr. Lesser's
14 direct and rebuttal testimonies and that is I just
15 want -- what has been filed with the Commission, a
16 number of the exhibits were stricken. Are we going
17 to get a complete set of his direct and rebuttal
18 testimony or at least filed with the Commission that
19 reflects what exhibits are already in versus --
20 because right now the original filing has the
21 totality of the exhibits.

22 MR. DICKS: Correct. And I thought by striking

1 out the testimony that referenced the exhibits --
2 and again I would only ask that his rebuttal and
3 direct testimony after the motion to strike which
4 includes the stricken exhibits be received into
5 evidence.

6 MR. ROONEY: Right. And I ask from a
7 procedural standpoint so that the record is clean.

8 (Pause.)

9 JUDGE ALBERS: I think given that all of the
10 exhibits are already on e-Docket, given that they
11 are not going to be with the final version of the
12 testimony that's admitted, just to avoid having
13 multiple copies of the same thing on e-Docket, the
14 ruling -- I am sorry, the report that we submit to
15 the Clerk's office will indicate which exhibits are
16 admitted and that will appear on e-Docket. So it
17 will be clear somewhere on e-Docket which of the
18 lettered exhibits are actually in the record.

19 JUDGE SHOWTIS: So you won't have to refile.
20 We are not requiring that North County refile,
21 resubmit, exhibits which are going into the record.

22 MR. ROONEY: Into the evidentiary record.

1 JUDGE SHOWTIS: Right, but they will be
2 identified in our ALJ report that we send to the
3 Chief Clerk.

4 MR. DICKS: And it also identifies as a matter
5 of record down in your order that was e-mailed to
6 all of the parties, I presume.

7 JUDGE ALBERS: Yes, those are the ones we had
8 stricken.

9 JUDGE SHOWTIS: This would be the flip side.
10 We would be identifying the ones that remain in the
11 record.

12 MR. DICKS: Got to cover both sides.

13 JUDGE ALBERS: Are you tendering your witness
14 for cross?

15 MR. DICKS: Correct.

16 JUDGE ALBERS: Mr. Rooney or Ms. Naumer?

17 MR. ROONEY: Thank you, Your Honor.

18 CROSS EXAMINATION

19 BY MR. ROONEY:

20 Q. Good morning, Mr. Lesser. My name is John
21 Rooney and I have a little bit of cross examination
22 here for you this morning. I would like to know a

1 little bit about NCC. When was NCC first started?
2 NCC being North County Communications, Your Honor.

3 **A.** 1990.

4 **Q.** And currently how many employees does NCC have?

5 MR. DICKS: Objection, irrelevant, not likely
6 to lead. Your Honor, it is prejudicial. It is also
7 violative of his company's right to privacy and has
8 no bearing on any of the issues in this case.

9 MR. ROONEY: Your Honors, NCC invited us to
10 this party. I think as a matter fact they are
11 claiming to be a CLEC here. They claim to have the
12 leg. Part of our question goes to how many
13 employees they have to cover the various multitude
14 of states they claim to be serving in. And the
15 question of the leg, what they did or do not do
16 here, Mr. Lesser's testimony even describes the fact
17 that due to their limited employees and resources
18 they couldn't move as expeditiously. They concede
19 that in their rebuttal testimony. As a matter of
20 background I believe it bears on our understanding
21 in terms of what NCC could or could not do in the
22 case.

1 MR. DICKS: It bears on nothing, respectfully,
2 Your Honor, having to do with whether or not this
3 organization is a properly certificated CLEC. There
4 is no issue with regard to that in this case.
5 Certification is a matter of public record and it
6 has no bearing on the case.

7 MR. ROONEY: I didn't raise the issue of
8 certification.

9 JUDGE ALBERS: We will overrule the objection
10 and give it the appropriate weight.

11 THE WITNESS: So I should answer?

12 JUDGE ALBERS: Yes.

13 THE WITNESS: A. Five.

14 MR. ROONEY:

15 **Q.** I understand you are the president of NCC?

16 **A.** Yes.

17 **Q.** Are all those employees located in California?

18 **A.** Yes.

19 **Q.** Now, as I understand it, NCC is currently
20 interconnected with Verizon in Illinois using
21 Verizon facilities, is that correct?

22 **A.** Verizon's facilities and North County's

1 facilities.

2 **Q.** Correct. And am I correct to state that NCC
3 has been interconnected with Verizon since sometime
4 late August 2002?

5 **A.** Approximately. I don't have the exact date but
6 I believe that's accurate.

7 **Q.** And would I be correct to state that Verizon
8 entered into an interconnection agreement with NCC
9 on or about February 5, 2002?

10 **A.** I do not have the date in front of me but that
11 sounds about right.

12 **Q.** And would I be correct that that
13 interconnection agreement was executed and entered
14 into prior to the time NCC filed the complaint at
15 the ICC?

16 **A.** Yes.

17 **Q.** And with regard to -- let me step back here a
18 second, and I apologize because I was working off
19 your fax of the testimony I received last night, the
20 edited testimony, and so there is no page numbers on
21 it so I need to plow through where I have got to go
22 here. I have marked them individually, Mr. Lesser,

1 so if you have it, you may want to do the same
2 because I will be referring to different page
3 numbers in your testimony.

4 MR. DICKS: The copy I gave you this morning,
5 the numbering was corrected on it.

6 MR. ROONEY: I have no numbers on the copy you
7 gave me this morning.

8 MR. DICKS: Is it on rebuttal?

9 MR. ROONEY: Correct.

10 MR. DICKS: It might not be on the rebuttal.

11 MR. ROONEY: Right.

12 MR. DICKS: I apologize. It isn't on the
13 direct and the rebuttal. I will number them this
14 morning.

15 MR. ROONEY: I am going to try to use the
16 document you submitted today, so I will need a
17 second here. I apologize.

18 JUDGE SHOWTIS: Let's go off the record.

19 (Whereupon there was
20 then had an
21 off-the-record
22 discussion.)

1 MR. ROONEY:

2 Q. Using the number that I believe is in place
3 now, turn to page 19, Mr. Lesser, of your testimony,
4 rebuttal testimony, that is. In response to a
5 question that begins on line 1 that begins
6 "Mr. Bartholomew testified," in the answer you --
7 second sentence beginning on line 4 reads once
8 again, "Whatever suits their needs in a specific
9 case," do you see that testimony?

10 A. No.

11 JUDGE ALBERS: Off the record.

12 (Whereupon there was
13 then had an
14 off-the-record
15 discussion.)

16 MR. ROONEY:

17 Q. All right. Let's start this again. On what is
18 my page 19 and your page 21 as you have written it,
19 the question at the top of the line says,
20 "Mr. Bartholomew testified that he has never heard
21 about separate facilities and it goes on from
22 there," are you with me?

1 **A.** Yes.

2 **Q.** If you go down to line 4 which is your answer,
3 the second sentence, you state once again, "They say
4 whatever suits their needs in a specific case." Do
5 you see that sentence?

6 **A.** Yes.

7 **Q.** I would like to explore that theory a little
8 bit about "They say whatever suits their needs in a
9 specific case," okay? On page -- it is my page 1, I
10 am sorry, what will be page 2 of your testimony, the
11 first page after the cover page on your rebuttal
12 testimony, line 12, the question relates, "Are you
13 asking for money damages," and you say --

14 **A.** Excuse me, what page is this?

15 **Q.** Well, it would be, as your counsel has
16 identified the paging, it would be page 2 of your
17 rebuttal testimony, the first actual page of Qs and
18 As.

19 **A.** And it starts out, "What is your name and
20 position?"

21 **Q.** That is correct. If you go to line 12 the
22 question is, "Are you asking for monetary damages,"

1 do you see that?

2 **A.** Yes.

3 **Q.** And here if I understand correctly, NCC is not
4 seeking, no longer seeking, monetary damages, is
5 that correct?

6 **A.** I am not sure I was ever seeking monetary
7 damages.

8 **Q.** Okay. Well, then let's take a look at that.
9 Counsel, I am approaching the witness with regard to
10 the copy of complaint that was filed on February 15.

11 MR. DICKS: You don't need my permission to
12 approach, counsel, but I appreciate your asking.

13 **Q.** And turn to page 9 and I ask you to look at
14 what is Paragraph C there, correct? Am I correct
15 that that reads "the awarding of damages to North
16 County in an amount according to proof"?

17 **A.** Yes.

18 **Q.** Now, just so I am clear then, North County
19 isn't seeking monetary damages here in Illinois, is
20 that correct then?

21 MR. DICKS: I am just going to object to vague
22 and ambiguous because counsel knows he is seeking

1 our attorneys' fees. If he is not including
2 attorneys' fees --

3 MR. ROONEY: Thank you.

4 **Q.** Setting aside attorneys' fees, North County is
5 not seeking monetary damages in Illinois, is that
6 correct?

7 **A.** I am seeking my expert fees. I am seeking the
8 cost of this litigation. I am not an attorney so I
9 can't answer when it says monetary damages what
10 exactly that means from a legal standpoint. I can
11 just tell you that I am asking to become whole again
12 from this legal proceeding.

13 MR. DICKS: We can enter into a legal
14 stipulation here. I don't mean to belabor it. We
15 are only seeking attorneys' fees and costs of
16 litigation, not monetary loss to profits or lost
17 business opportunity. We are limiting our claim to,
18 besides injunctive relief on the monetary side,
19 simply attorneys' fees, costs, expert fees.

20 MR. ROONEY: I appreciate that clarification
21 because that's not what your testimony says here.
22 And I understand it has changed since when NCC filed

1 the complaint about a year and a half ago.

2 THE WITNESS: Are you asking me back a question
3 has it changed? I don't understand your question.

4 MR. ROONEY:

5 Q. Just to clarify, as I understand it now, what
6 NCC is seeking is different than what NCC was
7 seeking when they filed the complaint back in
8 February of '02?

9 MR. DICKS: Stipulated.

10 JUDGE ALBERS: All right. Move on.

11 MR. ROONEY:

12 Q. Now, in that same answer you state that "I only
13 ask that my attorney fees be paid and that this
14 tribunal prevent Verizon from perpetrating its
15 delaying tactics on NCC or anybody else." Did I
16 read that accurately? That's on page 2 of your
17 rebuttal testimony, same page we were just on.

18 MR. DICKS: Stipulate that's the testimony,
19 Your Honor.

20 Q. I would like to ask you then a question,
21 Mr. Lesser. Can you identify or have you identified
22 in any of your testimony any other CLEC who has

1 purportedly been subject to the delaying tactics you
2 are talking about here?

3 **A.** Yes, I did talk to two different CLECs and they
4 were delayed by Verizon.

5 **Q.** Isn't it correct that your own witness, Mr.
6 Dawson, in his testimony identified the two CLECs
7 that he worked for here in Illinois and they had no
8 problems with Verizon actions here in Illinois?

9 **A.** I don't know. I am just saying that I talked
10 to two CLECs and they were delayed by Verizon and
11 they are still delayed. One of them I think was
12 delayed approximately a year and a half, and it is
13 in my testimony, that Verizon was not giving them
14 even an interconnection agreement. And the second
15 carrier can't even provide service because, while
16 they are interconnected, they can't have 9-1-1
17 trunks which would be a violation of Commission
18 rules to give people outbound lines while they can't
19 dial 9-1-1. So yes, they were delayed.

20 MR. DICKS: Your Honor, I need to address the
21 Court at this point. Counsel brought a motion to
22 strike on this. He has now opened the door on the

1 issue. His testimony is in. I am going to ask the
2 Court now to rule and ask that that portion of the
3 motion to strike, that it is withdrawn. Because he
4 asked this testimony be stricken and now he has
5 asked that it be testified to about the two CLECs
6 that he has contacted, that it be stricken as
7 hearsay. And now it is in evidence. I didn't
8 introduce it. The door was opened by counsel. So I
9 am asking now that the Court modify its ruling as to
10 the hearsay objection regarding contact with the two
11 CLECs regarding delays in Illinois.

12 MR. ROONEY: I would ask that Your Honors defer
13 that ruling until we finish this examination here.
14 Opening a door at this juncture, you are going to
15 have your opportunity to cross in a little bit, or
16 redirect, and I would like the opportunity to finish
17 my lines of questioning so we go forward and then
18 raise my response to you at a little bit later time.

19 MR. DICKS: My concern is that the testimony is
20 now in evidence that was requested, so I would just
21 like a ruling that it has now opened the door and it
22 is in.

1 JUDGE SHOWTIS: Mr. Dicks, maybe you would have
2 to go back to the originally filed testimony but
3 could you point us to the testimony that was
4 stricken where there was a reference to the two
5 other CLECs, just so we can look at that?

6 MR. DICKS: If counsel will give the page and
7 line that he just read from, we can go right to it.

8 MR. ROONEY: It is the rebuttal testimony.

9 MR. DICKS: What page and line are you reading
10 from the rebuttal testimony?

11 MR. ROONEY: I am sorry. I asked him a
12 question from Mr. Dawson's testimony.

13 MR. DICKS: Before that. Could I have the last
14 two questions and answers given to the witness read?

15 JUDGE ALBERS: I found it.

16 MR. DICKS: From the original testimony or from
17 the stricken?

18 JUDGE ALBERS: This is from the original
19 rebuttal testimony of Mr. Lesser.

20 MR. ROONEY: I apologize.

21 JUDGE ALBERS: He is discussing statements
22 concerning Ms. Allison. It is on my page 22, starts

1 about the middle of the page.

2 MR. ROONEY: Then I will go forward then.

3 JUDGE ALBERS: Wait a minute.

4 MR. DICKS: Yeah, I have that from page 22,
5 line 18, all the way through page 23, line 10, was
6 stricken as being hearsay, talking about the delays
7 of these two. Counsel asked a direct question that
8 wasn't it true that nobody else was delayed. He
9 testified that he contacted the two CLECs regarding
10 their delay. That's now in evidence and I would ask
11 that from the order Lesser Rebuttal, page 22, line
12 18, it is item number 8 on page 2 of you order, page
13 22, line 18, to page 23, line 10, be modified to
14 reflect that that motion to strike is now withdrawn.

15 MR. ROONEY: Well, Your Honors, if I may, my
16 question went to what's still in evidence and his
17 comment that the tribunal prevent Verizon from
18 perpetrating its delaying tactics on NCC or anybody
19 else. I asked him who else. Okay. Because at this
20 point he is making a statement that alleges that
21 there are others out there. And I was focusing on
22 my cross examination on this particular phrase. I

1 certainly didn't open the door to what he was
2 testifying about otherwise.

3 JUDGE ALBERS: Did you have other questions
4 along this line?

5 MR. ROONEY: Yes, I did, one other question.

6 JUDGE ALBERS: Why don't we hear that and
7 then --

8 MR. ROONEY: Thank you, Your Honor.

9 THE WITNESS: Maybe I should ask --

10 MR. DICKS: No, there is no question pending.

11 MR. ROONEY:

12 **Q.** Mr. Lesser, are you aware of whether any other
13 CLEC in the state of Illinois has filed a complaint
14 at the Illinois Commerce Commission alleging any
15 delays or any delaying tactics that Verizon has
16 perpetrated? And I am speaking specifically of
17 complaints filed at the Illinois Commerce
18 Commission.

19 **A.** I am not aware if they have filed any or have
20 not filed any.

21 **Q.** Let me ask --

22 JUDGE ALBERS: Does that end your questions on

1 that line?

2 MR. ROONEY: That's it.

3 (Pause.)

4 JUDGE ALBERS: Regardless of the weight of the
5 testimony on page 22 through 23, lines 18 on page 22
6 through line 10 on 23, regardless of the weight we
7 should accord to that, in light of Mr. Rooney's
8 questions, I will withdraw the ruling on the motion
9 to strike.

10 MR. ROONEY: Fine. Thank you, Your Honor.

11 JUDGE ALBERS: Given that that testimony will
12 be put back in, I am not -- knowing the future here,
13 keep this in mind because we will ask you to submit
14 another version of Mr. Lesser's rebuttal with this
15 back in.

16 MR. DICKS: On my to do list. Thank you very
17 much.

18 MR. ROONEY:

19 **Q.** Mr. Lesser, returning to the "whatever suits
20 their needs theory" identified in your testimony, I
21 would like to turn to what is on page 2, again
22 focusing on this first page of Q and A. And on that

1 page, line 7, you state, "In my case they were
2 trying to commit rate of return regulation
3 accounting fraud" and that you are here to tell your
4 story. That's your testimony, correct?

5 MR. DICKS: Stipulated.

6 Q. Okay. With respect to that rate of return
7 regulation accounting fraud that's found in your
8 rebuttal testimony, can you point to me where in
9 your complaint you alleged fraud on behalf of
10 Verizon?

11 MR. DICKS: The complaint speaks for itself,
12 Your Honor.

13 MR. ROONEY: I am asking the witness if he
14 knows if there is anything within the complaint
15 regarding any allegation of fraud.

16 JUDGE ALBERS: The witness can answer.

17 THE WITNESS: A. I am not an attorney. I
18 would just have to say the complaint speaks for
19 itself.

20 MR. ROONEY: Sounds familiar.

21 Q. With respect to your direct testimony,
22 Mr. Lesser, can you point to me in that testimony

1 where you allege the company was engaged in fraud as
2 you have used it in your rebuttal testimony?

3 **A.** I do not have my direct testimony in front of
4 me. It's been quite some time since I wrote it. I
5 would have to see it and look it over.

6 **Q.** Would you agree subject to check that in fact
7 there is no discussion of fraud regarding rate of
8 return regulation in your direct testimony?

9 **A.** No, I would say that my direct testimony speaks
10 for itself.

11 **Q.** Well, then maybe we should get a copy of your
12 direct testimony and point to me where you discuss
13 the concept of rate of return regulation fraud in
14 your direct testimony?

15 MR. DICKS: Stipulated it does not appear in
16 his direct testimony, Your Honor.

17 JUDGE ALBERS: Okay.

18 MR. ROONEY:

19 **Q.** Now, going back to your statement here where
20 you allege fraud on behalf of Verizon, I just want
21 to be clear next to where you are discussing this
22 alleged fraud. And my review of your testimony

1 indicates that on what is your -- what would be page
2 4, starting at the answer on line 24 and going
3 through the Q and A thereafter which would be page 5
4 up through line 4, that is the totality of your
5 support to the claim that Verizon was engaged in
6 rate of return regulation fraud?

7 MR. DICKS: Stipulated, Your Honor. That's all
8 this witness answered.

9 MR. ROONEY: I appreciate that. It makes this
10 easier.

11 Q. Now, Mr. Lesser, when is the last time that
12 Verizon -- do you know when is the last time that
13 Verizon had a rate case before the Illinois Commerce
14 Commission?

15 A. No, I do not. I believe it was some years ago.

16 Q. And as I understand it, do you hold yourself
17 out to be an expert in preparation of rate cases,
18 rate of return regulation?

19 A. No.

20 Q. So is it fair to state that you wouldn't know
21 whether or not these alleged expenses would be put
22 into rate base or have been put into rate base,

1 isn't that correct?

2 **A.** I don't know what Verizon would do, if Verizon
3 could put it in.

4 **Q.** But they haven't. You are not aware that they
5 have, correct?

6 **A.** Well, there is no rate case filed before the
7 Commission so it is all hypothetical whether Verizon
8 would put this in or not put this in. I am not
9 Verizon. You would have to ask Verizon would they
10 have done this.

11 **Q.** But going back to page 2 in your testimony you
12 are saying that they are trying to commit rate of
13 return regulation accounting fraud. And my question
14 to you is, if you have no idea as to what Verizon is
15 or is not doing with regard to its rates, on what
16 basis do you make the statement that they were
17 trying to commit rate of return fraud?

18 **A.** I have seen no evidence that Verizon was going
19 to exclude this expense, and the fact is
20 historically Verizon has included all of their
21 expenses on this outside plant part of their rate of
22 return regulations that they have filed with the

1 Commission. So there is nothing for me to believe
2 that they would not have done the same thing for
3 this. And I was just asking the Commission to make
4 a ruling on that.

5 **Q.** So as I understand it, you are speculating as
6 to this is what Verizon may do sometime in the
7 future, correct?

8 MR. DICKS: Misstates his testimony, move to
9 strike.

10 **A.** My testimony -

11 MR. DICKS: Wait a minute. The judge is going
12 to rule on my objection.

13 MR. ROONEY: I am not asking him to speculate.
14 He is the one who is saying that we are trying to
15 commit rate of return regulation fraud here, Your
16 Honor.

17 JUDGE ALBERS: Overruled. Go ahead and answer
18 the question.

19 THE WITNESS: A. I think my testimony stands
20 for itself. I think I made myself very clear. I
21 think I blew the whistle on what Verizon was
22 attempting to do. In my opinion they were

1 attempting to do rate of return fraud by
2 artificially increasing their expenses. They would
3 have filed that as expenses for outside plant cost
4 and that would have been part of their rate case.

5 MR. ROONEY:

6 **Q.** You have no documentation to reflect the fact
7 that it was Verizon's plan, as you put it, to do
8 that; you don't have anything that you have produced
9 in your testimony to support that, isn't that
10 correct?

11 **A.** Not in my testimony, but the fact is that
12 Verizon in the past, all outside plant has gone in
13 the rate of return.

14 **Q.** Well, then the question becomes, wouldn't you
15 agree with me, that it would be up to, given the
16 fact that we have some claim to rate of return
17 regulation, do you know whether or not the
18 Commission would review a proposed inclusion of
19 plant to determine whether or not it is prudent and
20 used and useful before including it in rate base?

21 **A.** Actually, since you asked that question, that
22 goes to my question of why I filed this complaint.

1 When I spoke with Mr. Koch, he told me that the
2 Commission wouldn't have caught something like this,
3 that they don't really look over the specifics and
4 especially in a small place like that that this
5 would have gone -- that they would have probably
6 gotten away with it. And that's why he suggested
7 that I file this complaint.

8 MR. ROONEY: I would object to that entire
9 answer. It is rank hearsay with regard to any
10 conversation he had with Mr. Koch. Mr. Koch isn't
11 here. He is claiming what Mr. Koch has stated and
12 that is rank hearsay. My question to him, if you
13 read the question back, has nothing to do with his
14 comments regarding a conversation with a person who
15 is not here subject to testimony.

16 MR. DICKS: Your Honor, this examiner is asking
17 this witness about his basis for the allegations of
18 attempted rate case fraud and in fact even going
19 into asking questions about what he thinks might
20 happen in the future based upon what he knows and
21 heard. It is not offered for the truth of the
22 matter asserted. It is offered to explain what this

1 examiner is asking is the basis for his claim that
2 Verizon is attempting rate base fraud. He is asking
3 the questions.

4 MR. ROONEY: And I would ask -- that is
5 correct, counsel. I asked the question. If you
6 want it to be reread --

7 (Pause.)

8 JUDGE ALBERS: We are going to sustain the
9 objection.

10 MR. ROONEY: Thank you, Your Honor.

11 **Q.** Mr. Lesser, are you aware that in the year 2000
12 Verizon reduced its rates by \$10 million in July of
13 2000?

14 MR. DICKS: Objection, irrelevant, hearsay.

15 MR. ROONEY: Quite frankly, I am asking him if
16 he is aware of whether that event ever took place.
17 It relates to whether or not Verizon is allegedly
18 inflating its rate base relating to the so-called
19 expenditures.

20 MR. ROONEY: Your Honor, it would make no
21 difference because we would not know if even
22 calculating that reduction, that reduction should

1 have been a larger reduction because of the amount
2 of expenses they are putting into the rate base.
3 There is just no way to know.

4 MR. ROONEY: Well, that would be my next
5 question is, do you know whether or not --

6 JUDGE ALBERS: Well, let's take care of this
7 first objection. I understand your objection but it
8 is overruled. So do you remember the question?

9 THE WITNESS: No.

10 MR. ROONEY:

11 Q. Mr. Lesser, do you know whether or not the ICC
12 approved a \$10 million rate reduction for Verizon in
13 the year 2000?

14 A. I do not know whether or not they did.

15 Q. Do you know whether or not Verizon had approved
16 a rate reduction of \$25 million over an 18-month
17 period beginning in May of 2003?

18 A. I do not know whether or not Verizon approved
19 that.

20 Q. Do you know whether or not the ICC staff
21 participated in both of those cases related to the
22 rate reduction?

1 **A.** I am not aware of the case so I don't know any
2 of the procedures that happened during this case, if
3 it even happened.

4 **Q.** And let me go back to this then. This
5 complaint was filed in February of 2002, correct?

6 **A.** The record stands for itself. I really don't
7 know the dates.

8 **Q.** Fine, okay. What's your conversation -- strike
9 that. I won't even go into it. With regard to --
10 Mr. Lesser, would you agree with me that your claims
11 regarding fraud, regarding the rate of return fraud
12 of Verizon, now has been public for several months?

13 **A.** I don't really understand what the term
14 "public" means.

15 **Q.** Well, let me put it this way. You filed or
16 your attorney has filed on e-Docket here at the ICC
17 your testimony. Are you aware of that?

18 **A.** No. I am not an attorney and I don't know what
19 an e-Docket is.

20 **Q.** Well, assume for me hypothetically that
21 testimony which is filed and prefiled is made public
22 to the extent that it does not contain confidential

1 information. That's my hypothetical, okay?

2 **A.** I don't feel comfortable answering hypothetical
3 questions.

4 **Q.** Well, you are here as an expert and part of
5 your testimony goes to this. I believe I am
6 entitled to ask you a hypothetical question. Your
7 Honor, I would ask you to direct the witness to
8 answer the hypothetical question. He cannot
9 blanketly deny that.

10 JUDGE ALBERS: Mr. Lesser, you can answer a
11 hypothetical question.

12 THE WITNESS: All I can say is --

13 MR. ROONEY: There isn't a question pending
14 yet.

15 THE WITNESS: Okay.

16 MR. ROONEY:

17 **Q.** Assume for me hypothetically that when
18 testimony gets filed here at the ICC, that so long
19 as it is not confidential, it is publicly available
20 on the Commission's website, okay?

21 **A.** I have never testified to this Commission that
22 I am an expert in these legal affairs or the

1 policies of the Commission or what is public or what
2 is not.

3 **Q.** That is not my question or even a question
4 pending yet. I said assume for me hypothetically
5 that that's the case, that there is public
6 information available. Now, assume for me
7 hypothetically that this public information includes
8 your testimony here today, okay, in which you are
9 saying that there is fraud being perpetrated. You
10 with me so far?

11 **A.** Yes.

12 **Q.** Now, if in fact your concern were of such,
13 given your participation in various public utility
14 commissions throughout the country, would you assume
15 that the state commission staff would become
16 interested and actually involved in a case to
17 investigate your allegations if they thought they
18 were in fact justified?

19 **MR. DICKS:** That calls for speculation as to
20 what the Commission might do upon reading his
21 testimony. That is not a hypothetical question.

22 **JUDGE ALBERS:** I think you had him there for

1 awhile, Mr. Rooney, but now we are getting --

2 MR. ROONEY: Let me go back.

3 **Q.** Am I correct, Mr. Lesser, assuming
4 hypothetically that your testimony has been
5 available publicly since August of this year, your
6 rebuttal testimony...

7 **A.** Okay.

8 **Q.** ..am I correct or are you aware of any staff,
9 ICC staff, investigation concerning Verizon's rates?

10 **A.** This would go to my conversation with Mr. Koch.

11 **Q.** No, I am asking for a -- it would not go to
12 that conversation. I am asking you whether or not
13 the Commission started any formal investigation of
14 Verizon's rates.

15 **A.** Well, I did speak to Mr. Koch about this
16 subsequently --

17 **Q.** Mr. Lesser --

18 **A.** But that's the only way that I can answer your
19 question because that's where I got my information
20 to answer your question.

21 MR. ROONEY: I would move to strike the answer
22 because my question went to is he aware of any

1 formal Illinois Commerce Commission investigation.

2 JUDGE ALBERS: The answer is stricken and you
3 can answer that question.

4 JUDGE SHOWTIS: I assume when Mr. Rooney says
5 formal that he is talking about some sort of
6 docketed proceeding.

7 MR. ROONEY: Correct, a Commission initiated
8 investigation with respect to Verizon's rates.

9 THE WITNESS: I had a conversation with
10 Mr. Koch.

11 MR. ROONEY: I would object, Your Honor.

12 MR. DICKS: He wants to know if there is a
13 formal file.

14 THE WITNESS: I don't know what his -- the
15 definition of what he was doing. I know that he was
16 working on a case for Ameritech and the local phone
17 companies in this state concerning rates that are
18 charged for unbundled network elements, and I just
19 don't really know if that formal case involved
20 things like this or not. I am not an expert, so I
21 really can't answer that question. It may and it
22 may not.

1 MR. ROONEY: I would ask that that be stricken,
2 Your Honor.

3 JUDGE ALBERS: I figured you might. Again, the
4 answer is stricken.

5 MR. ROONEY:

6 **Q.** Are you aware sitting here today, Mr. Lesser,
7 whether the Illinois Commerce Commission has
8 initiated a formal investigation, a docket, where
9 hearings might take place, where evidence is
10 presented that would be investigating your claims
11 that there is rate of return fraud being conducted
12 by Verizon?

13 **A.** Besides this litigation, I am not aware of any
14 other hearings.

15 **Q.** Am I correct that the Illinois Commerce
16 Commission staff has not intervened and participated
17 in this case?

18 **A.** I do not know if they have intervened or not.

19 **Q.** Would I be correct that they have not -- are
20 you aware whether they have filed any testimony in
21 this case?

22 **A.** I am not aware if they have or they have not.

1 **Q.** You don't see staff counsel or staff witnesses
2 sitting here at the table today, am I correct?

3 **A.** I only see three individuals sitting at the
4 table.

5 MR. DICKS: We will stipulate that they haven't
6 intervened. He just doesn't know, so. They haven't
7 intervened. There is nobody here.

8 JUDGE ALBERS: Okay. We will stipulate that
9 staff hasn't intervened.

10 MR. ROONEY: That's fine.

11 **Q.** On page 3 of your rebuttal testimony,
12 Mr. Lesser, you make the statement down starting on
13 line 22 that before filing -- and I am assuming that
14 means the complaint here -- Verizon refused to
15 connect with NCC at any technically feasible point.
16 And as I further understand, you are alluding to the
17 fact that, or what you are saying here, is that
18 Verizon has done a great job only after you filed,
19 NCC filed, a complaint here in Illinois, is that my
20 understanding of your testimony?

21 **A.** My testimony stands for itself.

22 **Q.** Well, I am trying to understand exactly what

1 you mean, Mr. Lesser, and, quite frankly, I
2 understand why it stands for itself but I think we
3 are here to explore exactly what you mean in this.

4 JUDGE ALBERS: Could you identify that page
5 again?

6 **Q.** Yeah, it's -- under the convention we are
7 currently in it is page 3, line 22, in response to a
8 question "If Verizon did such a great job, why are
9 you here." And am I to understand that it is your
10 testimony that you believe that Verizon did such a
11 great job because of the fact you filed a complaint
12 here in Illinois?

13 **A.** Yes, that is what I believe.

14 **Q.** Now, would you further agree with me that when
15 you filed the complaint in West Virginia, that you
16 don't believe that they did a great job in West
17 Virginia even after you filed a complaint?

18 **A.** What is the question again about West Virginia?

19 **Q.** Well, in your testimony you state, your direct
20 testimony, you state that you filed a complaint in
21 West Virginia?

22 **A.** Yes.

1 **Q.** And I am also led to believe in your direct
2 testimony, the remaining portions of your direct
3 testimony, that you still have issues with Verizon's
4 actions in West Virginia, is that correct?

5 **A.** Not concerning the complaint that was filed.
6 The complaint that was filed, the issues I had are
7 taking their steps. There are other issues with
8 West Virginia if you would like me to discuss those.

9 **Q.** No, not particularly. But going back to that
10 West Virginia complaint that you reference
11 frequently in your direct testimony, am I correct
12 that the West Virginia Commission did not accept
13 NCC's claims and entered an order contrary to NCC's
14 position?

15 **A.** No, that's actually contradictory to what it
16 is. They did say I was delayed unreasonably by
17 Verizon.

18 **Q.** They did not find a policy, which was what your
19 claim was in West Virginia; your claim was that
20 there was some policy, am I correct, that the
21 Commission found that Verizon did not have the
22 policy you claimed they had?

1 **A.** No. When you say Commission, do you mean staff
2 of the commission or commissioners?

3 **Q.** The West Virginia Commission that entered the
4 order rejecting that position.

5 **A.** They did not consider that there was a policy,
6 yes, that is correct.

7 MR. DICKS: Your Honor, I am now asking the
8 Court to reconsider the motion to strike concerning
9 the proceedings in the out-of-state jurisdiction,
10 the out-of-Illinois state jurisdictional rules and
11 rulings from other commissions and the proceedings
12 of other commissions because they brought a motion
13 to strike those as well. Now we are asking a
14 question about the substantive nature of the rulings
15 and of the complaints. Again, he has opened the
16 door on something they moved to strike on.

17 MR. ROONEY: Your Honor, with all due respect,
18 his direct testimony or what is remaining of it is
19 completely filled with a discussion of what he
20 believes went on in West Virginia and particularly
21 focused on all of the extraneous matter that the ALJ
22 struck, was struck rightfully so. We still believe

1 that a lot of his direct testimony should have been
2 stricken with regard to West Virginia, but we
3 understand and respect the ALJs' ruling with that
4 regard. But at the end of the day I think it is
5 relevant to note that in fact the West Virginia
6 Commission rejected the policy arguments that NCC
7 put forth in that proceeding, and it no way opens
8 the door to all of the surpluses that have been
9 asserted.

10 (Pause.)

11 JUDGE SHOWTIS: The ALJs agree with Mr. Rooney.
12 We did not strike all references to what happened in
13 other jurisdictions. In fact, there is quite a bit
14 of testimony let in with regard to West Virginia. I
15 know we struck, for example, an article that was
16 relied on that had nothing to do with proceedings in
17 other states or before other commissions. So I
18 don't think that the door has been opened to
19 reconsider our ruling because we did look at each
20 particular piece of testimony and exhibits and
21 determined what should or should not be excluded.
22 So we are not going to go back on our rulings with

1 regard to exclusion of testimony exhibits pertaining
2 to other jurisdictions, and some of that we let in
3 and some of that we did not.

4 MR. DICKS: Thank you, Your Honor.

5 MR. ROONEY:

6 **Q.** Mr. Lesser, I am going to attempt to
7 characterize what I believe your position is.
8 Please correct me if I am wrong.

9 **A.** Can I answer that other question? Because I
10 was not complete.

11 **Q.** I am sure your counsel will ask any redirect he
12 wants to, to the extent that you need to amend that.
13 I would ask that that be done at that point in time.

14 JUDGE SHOWTIS: Your counsel can bring that up
15 if he wants to clarify something on redirect.

16 MR. ROONEY:

17 **Q.** Mr. Lesser, again, then this question, I am
18 willing to understand your testimony positions, so
19 correct me if I am wrong. As I understand, your
20 claim is that Verizon wants to delay in your case
21 your entry into the Illinois market, is that a fair
22 summarization of what your claim is here?

1 **A.** Yes, that Verizon did want to delay me.

2 **Q.** And that was because you are a potential
3 competitor of Verizon?

4 **A.** I am not sure why Verizon did it. You are
5 asking me to state Verizon's state of mind. I do
6 not know that.

7 **Q.** Well, then I guess my question to you is, is it
8 your position then that Verizon, regardless of your
9 reasons for coming into Illinois, just wanted to
10 delay your entrance into this state?

11 **A.** It is my position that Verizon wanted to delay
12 North County Communications' entrance into this
13 state.

14 **Q.** And it is based upon in your view a series of
15 e-mails that took place in December of 2001?

16 **A.** That is not correct.

17 **Q.** Well, with regard to the e-mails that you have
18 attached as exhibits to your testimony, I ask you to
19 turn in your direct testimony -- and you were kind
20 enough to attach to that testimony an entire series,
21 I think it is C is the attachment, Your Honor -- and
22 I would like you to focus, I believe it is, on page

1 -- and the pages are down here in the right-hand
2 corners, Your Honors, as I understand it -- page
3 C-032?

4 MR. DICKS: I am going to give the witness a
5 witness binder.

6 MR. ROONEY:

7 **Q.** Hold onto that for one second, okay. Going
8 back to your rebuttal testimony, and just I am
9 referencing this, counsel, just so we are all on the
10 same page.

11 **A.** Can I further answer your last question?

12 MR. DICKS: No, there is no question pending.

13 MR. ROONEY:

14 **Q.** Again, I am trying to compare an earlier
15 version with this to know where I am. Okay, found
16 it. I apologize for the delay. This would be on
17 what would be page 5 of your rebuttal testimony.
18 And just for set up, it just reflects the fact that
19 you sent an e-mail to Dianne McKernan regarding
20 Verizon's -- I am sorry, regarding North County
21 Communications' interest to interconnect with
22 Verizon at the DeKalb tandem, okay. Would the

1 e-mail identified as Attachment C-032 to your direct
2 testimony be the e-mail that you are referencing?

3 MR. DICKS: Objection, seems like that wasn't
4 referencing any particular -- maybe I just
5 misunderstood the question, I apologize.

6 MR. ROONEY: Actually, he cites to it in the
7 reference. I just want to make sure that is his
8 testimony.

9 THE WITNESS: I am not sure of the question.

10 MR. ROONEY:

11 **Q.** The question is I want to make sure that your
12 C-032 that I have here is the actual e-mail you are
13 referencing in your answer.

14 **A.** The C-032 that I have in front of me is the
15 same that I am talking about. The one you are
16 holding, I can't see.

17 **Q.** Well, fair enough. I will take it on faith at
18 this juncture. Now, with regard to that e-mail, as
19 I read it I see that you asked Verizon three
20 questions on that e-mail, would that be a correct
21 statement? And it is the middle, "Is Verizon going
22 to require a fiber build for this?" "How much

1 capacity will Verizon give me without requiring a
2 fiber build?" And then down at the bottom, "Is this
3 a realistic goal," correct?

4 **A.** I asked a lot of questions that are not
5 specifically questions. So I don't want to -- you
6 know, if I counted the question marks, you are
7 correct. But there is a lot of things in there that
8 I am asking about, you know, if my expectations are
9 correct. I was making a lot of statements of facts
10 that I was expecting that if I was incorrect, by the
11 fact that I was stating it that I was expecting that
12 Verizon would come back and tell me no, I am
13 incorrect. But I didn't specifically ask the
14 question "Am I incorrect?" in any sense.

15 **Q.** But in terms of the three specific questions
16 you asked Verizon, those are the three statements
17 that end with a question mark on that e-mail,
18 correct?

19 **A.** There are three question marks, right. And,
20 like, for example, asking would this be enough time
21 to turn up Tls, there was multiple parts in there,
22 there was multiple parts concerning the LERG (sp).

1 **Q.** I understand. I mean, you are making certain
2 comments and you may want some clarification, but
3 the three specific questions you asked regarding
4 Verizon was (1) is Verizon going to require a fiber
5 build for this, how much capacity will Verizon give
6 me without it requiring a fiber build, and then
7 given the time frames you reflect where you are
8 asking is that a realistic goal?

9 **A.** Yes.

10 **Q.** Now, as I understand it, you received an e-mail
11 from Dianne McKernan on December 13 which would be
12 reflected as the following page C-033, correct?

13 **A.** Yes.

14 **Q.** Am I further correct that attached to that
15 e-mail was actually a string of e-mails from various
16 Verizon personnel which I believe goes on for
17 several pages that are attached to your Appendix C,
18 am I correct there?

19 **A.** Yes.

20 **Q.** And not focusing -- and at the time you
21 received this e-mail, I presume you were very
22 interested in what Verizon's response would be to

1 your question, correct?

2 **A.** Yes, that's why I sent the e-mail.

3 **Q.** So I am assuming you read, when you received
4 the e-mail, you read the entire e-mail?

5 **A.** I read her response to me.

6 **Q.** Given the importance of the e-mail as you just
7 indicated, did you look to see what the other
8 Verizon personnel were saying, particularly in light
9 of the fact that you had issues as you allege in
10 other Verizon states?

11 **A.** Not at that time.

12 **Q.** So then when in fact did you come to read the
13 totality of the e-mail that was sent on December 13?

14 **A.** After Mr. Hartmann wrote a letter to North
15 County saying that if we didn't like this procedure
16 that we should T-up and take this to the Illinois
17 Commerce Commission.

18 **Q.** With regard to the question that you asked,
19 turning back to your question, your first question
20 on page C-032, you asked is Verizon going to require
21 a fiber build for this, do you recall that?

22 **A.** Yes.

1 **Q.** Now, if you turn to page C-034, am I not
2 correct that Mr. Bartholomew sent an e-mail to
3 Ms. McKernan which states, "Verizon West does not
4 require a fiber build in order to interconnect"?

5 **A.** Yes. Do I know why he said that?

6 **Q.** Well, I wouldn't want you to speculate since at
7 the time -- I am sure Mr. Bartholomew can tell us
8 exactly why when he gets up here.

9 **A.** I wouldn't be speculating.

10 **Q.** I appreciate the offer, but that wasn't my
11 question. So would I be correct then on an e-mail
12 you received on December 13, 2001, it contained
13 information from a Verizon employee that VZ West
14 does not require a fiber build in order to
15 interconnect?

16 **A.** Yes.

17 **Q.** Now, as I understand going back to your e-mail
18 on what is now C-032, you reflect the fact that your
19 secondary choice of locations is Des Moines, Iowa.
20 Once you received the message from Verizon on
21 December 13, at least the one -- the entire message
22 which I understand includes Dianne's message to you

1 plus the attachments, and as I understand your
2 interpretation of Dianne's e-mail, did you go seek
3 interconnection from Qwest?

4 **A.** Yes, I did seek interconnection from Qwest.

5 **Q.** Did you receive interconnection from Qwest?

6 **A.** I have received interconnection from Qwest.

7 **Q.** Related to trying to serve Leaf River?

8 **A.** No. I have only received and requested
9 interconnection with Qwest in Tucson, Arizona, and
10 Phoenix, Arizona.

11 **Q.** My question really is to Iowa which I believe
12 the focus of your own inquiry was there.

13 **A.** I misunderstood your question.

14 **Q.** I am sorry. So with respect to Iowa did you go
15 to Qwest for purposes of interconnecting with their
16 facilities in Iowa subsequent to December 13, 2001?

17 **A.** No, I evaluated the situation at the time, the
18 cost of litigation in all our markets and decided
19 that -- and the additional cost of having to apply
20 for approval to be a phone company in Iowa and chose
21 to not go down that path and therefore did not
22 request interconnection with Qwest because we had no

1 authority to provide service in Iowa.

2 **Q.** I guess I am curious in a bit in terms of
3 assessing whether or not you would go forward with
4 litigation when you identified you already had an
5 alternative picked out here that could be Iowa. You
6 just testified that you considered litigation with
7 regard to costs when you identified here that your
8 second choice was going to be Iowa, potentially
9 could be Iowa?

10 **A.** No, my cost of litigation with all Verizon and
11 all of the other states we were fighting them in,
12 would I have additional money to then apply for
13 approval which was not on my initial states for
14 approval as we are expanding into the different
15 territories around the country. It would have cost
16 additional money for me to hire an attorney to get
17 approved in Iowa. And after I sent that e-mail, I
18 went through and evaluated it all and decided that
19 we just didn't have the money to expand into Iowa.

20 **Q.** In terms of -- but at the time you sent the
21 e-mail, you believed the second choice was Iowa,
22 correct?

1 **A.** Yes.

2 **Q.** Do you recall how much money it took NCC to get
3 a certificate here in Illinois?

4 **A.** I do not recall.

5 **Q.** Was it more than a thousand dollars?

6 **A.** I do not recall the amount.

7 **Q.** Do you know whether or not seeking a
8 certificate in Illinois was a contested proceeding?

9 **A.** I believe it was contested.

10 **Q.** You just don't know for certain?

11 **A.** Well, again, I am not an attorney. I don't
12 know the true definition of contested. I know
13 Ameritech or SBC was there and they -- I am not sure
14 if it would be defined if they were contesting it or
15 not, but they definitely did not want us approved.

16 **Q.** For purposes of serving in Verizon's territory,
17 did Verizon, if you recall, seek to object to NCC
18 being certificated to serving Verizon's territory?

19 **A.** Not that I am aware of.

20 **Q.** Are you aware as to whether Verizon has
21 objected to any CLEC looking for certification to
22 serve in its service territory?

1 **A.** I do not know if they have objected or not
2 objected.

3 **Q.** Fair enough. Now, turn back to your rebuttal
4 testimony.

5 JUDGE ALBERS: Mr. Rooney, are you close to or
6 at a breaking point, so to speak?

7 MR. ROONEY: Five more minutes.

8 JUDGE SHOWTIS: Okay. We would like to give
9 the reporter a break.

10 MR. ROONEY: You want to take that break now?
11 That's fine.

12 JUDGE ALBERS: Five minutes.

13 (Whereupon the hearing
14 was in a short recess.)

15 JUDGE ALBERS: Back on the record.

16 MR. ROONEY: Thank you, Your Honors.

17 **Q.** Mr. Lesser, I would like you to flip to what
18 would be page 6 of your rebuttal testimony and, so
19 you can keep up, your attachments which are the C
20 attachments and the pages we have kind of touched
21 upon. In your rebuttal testimony, lines 13 through
22 16, you reflect the language that Mr. Bartholomew

1 had in his e-mail that you received and then you
2 state, on line 18, in your own words saying,
3 "Recognizing that Bartholomew only answered part of
4 the question, Dianne sent the following e-mail,"
5 okay?

6 **A.** Okay.

7 **Q.** That's what you said. I want to make sure we
8 know where the context of this is. Now, if I go
9 back, am I correct that your question on C-032 was
10 is Verizon going to require a fiber build for this,
11 and then Mr. Bartholomew's answer is on C-034,
12 "Verizon West does not require a fiber build in
13 order to interconnect. CLECs may use leased
14 facilities, collocation, or fiber." Would you agree
15 with me that that answer in fact answers your first
16 question?

17 **A.** Yes.

18 **Q.** And, in fact, wouldn't you agree that would
19 also go to answer your second question because there
20 was no limitation on the requirement in
21 Mr. Bartholomew's answer?

22 **A.** Yes.

1 **Q.** Going back to questions I had asked you a
2 little bit ago, one of them was -- and I don't want
3 to mischaracterize your answer, so correct me if I
4 am wrong -- you stated that it was Verizon's plan to
5 delay NCC entering Illinois, correct? And then I
6 asked you what is that based on and you stated
7 that -- well, if you want, state it again. What did
8 you base that on and why did you believe that it was
9 Verizon's plan to delay NCC's entry into Illinois?

10 **A.** Can you ask that question one more time?

11 **Q.** Sure. As I understand your testimony, your
12 testimony is that Verizon purposefully delayed NCC's
13 entry into Illinois?

14 **A.** Yes, that is correct.

15 **Q.** And then my question was -- and I don't
16 recollect the totality of your response -- was on
17 what is that based, and as I understand it you said
18 -- well, could you --

19 **A.** Yeah, you want to know all the reasons what I
20 base that Verizon delayed me.

21 **Q.** Sure.

22 **A.** Well, this is involving multiple jurisdictions,

1 multiple e-mails, that Dianne McKernan made it very
2 clear to me that they would require -- I had to use
3 dedicated interoffice facilities to interconnect
4 with Verizon and, that is correct, it may not have
5 been necessarily a fiber because technically you can
6 have dedicated interoffice facilities on copper.
7 You can use -- you don't necessarily have to do a
8 fiber build if there is already a dedicated office
9 facility there on copper or fiber. I based this on
10 multiple e-mails that was told to me in New York
11 that Verizon had this policy, in West Virginia that
12 it had this policy and in Illinois that it had this
13 policy. And the clearest thing that I based on the
14 delay was a letter that kind of surmised the whole
15 position of North County Communications that
16 Mr. Dicks sent to Steven Hartmann, Verizon's senior
17 counsel in charge of all the Verizon areas, where he
18 clearly came back and said if you don't like this
19 protocol, then T-up and take us to court in
20 Illinois.

21 **Q.** Well, let me ask you this. You would agree --
22 well, you have been in the telephone industry for

1 awhile, correct?

2 **A.** Right.

3 **Q.** And you were aware when you made your request
4 in December 2001 that Illinois was formerly a GTE
5 state?

6 **A.** Yes.

7 **Q.** And that your experiences with New York and
8 West Virginia were former Bell Atlantic states,
9 right?

10 **A.** Yes.

11 **Q.** In your time would you expect that the
12 facilities would be engineered in a similar fashion
13 between one ILEC and another ILEC?

14 **A.** Depends on the circuit but it is pretty
15 universal with telecoms nationwide that we all
16 engineer our circuits -- you know, we use all the
17 same equipment, use the same wire.

18 **Q.** Well, certainly, but the manner in which SBC --
19 and I understand you worked for SBC in Missouri --
20 the manner in which SBC would engineer a circuit may
21 not be the same as the manner in which Bell Atlantic
22 would engineer its central offices?

1 MR. DICKS: If the question is with respect to
2 this witness, he has never worked for SBC in
3 Missouri or SBC otherwise.

4 **Q.** Oh, I am sorry. That was Mr. Dawson. I
5 digress. Then am I to understand your testimony
6 then today that the engineering of facilities would
7 be identical across the country?

8 **A.** In some ways yes; in some ways no. There are
9 certain policies, for example, certain phone
10 companies may say it takes ten days to engineer a
11 circuit where Pacific Bell may say it takes 20.
12 Pacific Bell may say that we use this type of
13 equipment and Verizon says we use this other type of
14 equipment. They are all set up to interoperate.
15 But usually, you know, a policy is set up, you know,
16 if I interconnect with SBC in San Diego, it's the
17 same as when I connect with SBC in San Francisco.

18 **Q.** Would you agree with me, though, that each
19 state has different terms and conditions found in
20 tariffs related to the manner in which a telephone
21 company has to provide service?

22 **A.** Yeah. I mean, they each have their own tariffs

1 in each state that they have to provide customers.

2 **Q.** And they may vary in the requirements and the
3 terms and conditions in each state in terms of the
4 manner and the process in which a party may
5 interconnect with the ILEC?

6 **A.** Yes, that's all done on a state level.

7 **Q.** And part of that, because it is not uniform
8 across the country, there may be issues involving
9 each state relating to that, the manner in which
10 that ILEC has engineered its facilities in a
11 particular state, isn't that correct?

12 **A.** I am not sure if any engineering is specific.
13 I have not seen any language specifically talking
14 about engineering at a state level. Usually that's
15 kind of left up to the parent company, how they
16 choose to work that. But I don't think I have ever
17 seen a document that says you have to engineer a
18 circuit this specific way.

19 **Q.** Fair enough. But would you agree, though, that
20 a state may have different points identified in
21 rules and terms where things can be interconnected?

22 **A.** Yeah, for example, in West Virginia the

1 commission ruled in this hearing that Verizon has to
2 make it very clear from now on that they can't do
3 this to North County or any other CLEC ever again.
4 They have to notify every single person that this is
5 not allowed.

6 **Q.** But we are talking about Illinois now. Let's
7 go back.

8 **A.** Right.

9 **Q.** With respect to Illinois did you happen to look
10 at any rules or regulations related to
11 interconnection that are on file with the Illinois
12 Commerce Commission?

13 **A.** Only with other interconnection agreements, and
14 I basically didn't find anything that -- anything
15 specific saying one way, either way, what the
16 requirements were for interconnection.

17 **Q.** Okay. But going back to your question, both
18 the questions that you gave to Ms. McKernan on
19 December 7 where you asked did Verizon require a
20 fiber build in Illinois, and I understand that you
21 are clear that in the body of that e-mail that
22 question was answered by Mr. Bartholomew, correct?

1 **A.** Well, I asked a question of Dianne McKernan;
2 Dianne McKernan asked a question to Charles
3 Bartholomew.

4 **Q.** But the fact of the matter is embedded in the
5 e-mail that you received on December 13, that e-mail
6 precisely answered the question you raised when that
7 response was given to you, correct?

8 **A.** Yes. I mean, the question kind of -- you know,
9 Dianne and I have worked together in so many
10 different states, and in hindsight I probably would
11 have asked a better question if I had known it was
12 going to third parties. Because Dianne knew what I
13 meant because that's why -- you know, it's like when
14 I walk into my office with a technician; I say it's
15 broken again. Well, they know what I am talking
16 about because I talked about it before.

17 **Q.** Let me ask you this. All of this took place
18 via e-mail, correct?

19 **A.** Yes.

20 **Q.** So when you are presuming that Dianne knew what
21 you meant, you didn't talk to her on December 7 to
22 discuss your e-mail, correct?

1 **A.** Well, when I use the term --

2 **Q.** When I ask -- the question is, did you just
3 talk to her over the phone orally on December 7?

4 **A.** You are correct, absolutely. It was by e-mail
5 only.

6 **Q.** And on December 11 when you got the e-mail from
7 Dianne and the string of e-mails attached to that,
8 did you call her that day to discuss the issue?

9 **A.** No, it was all by e-mail.

10 **Q.** And as you just indicated earlier, you may have
11 presented the question differently now thinking
12 about it, correct?

13 **A.** No. I would have --

14 **Q.** What did you say about what you would have
15 presented --

16 **A.** If I knew the question was going to other
17 individuals, I would have made the question more
18 clear. What I did to Dianne because she knew,
19 quote, the fiber build issue, as we sort of termed
20 that we were calling this whole problem, that's why
21 I used that term. But if I was sending an e-mail
22 going to people that had no idea at all, I would

1 have said is Verizon going to require us to use a
2 dedicated office facility whereas no retail
3 customers can share the same facility, that it may
4 be on fiber, may not be on fiber, very broad
5 questions, similar to what Mr. Dicks did to
6 Mr. Hartmann.

7 **Q.** In fact, you did send an e-mail to a host of
8 Verizon people. I am looking here at C-032. And
9 your testimony reflects the fact that it went not
10 only to Ms. McKernan, but it went to a number of
11 people. So in essence it wasn't directed -- because
12 your own testimony indicates that it went through an
13 entire group of Verizon individuals, correct?

14 **A.** These all individuals were involved in the
15 Verizon West Virginia. And Dianne McKernan
16 responded back to me saying, look, these people
17 weren't involved. In West Virginia these people
18 aren't. I went to the core of Verizon.

19 **Q.** But going to your question, your question was
20 not only directed to Dianne, she was the first
21 addressee, you made sure that it went to a host of
22 other Verizon individuals as well?

1 **A.** That were involved and that knew what I meant
2 by this term "fiber build."

3 **Q.** And you are saying that you believe that all of
4 these individuals know what you meant by that term?

5 **A.** Yes, because all these people were involved
6 with my incident in West Virginia.

7 **Q.** And, now, your understanding of the fact that
8 there is, for sake of a better term, what's been
9 indicated there was a Verizon East which would be
10 the former Bell Atlantic and the Verizon West,
11 correct?

12 **A.** Correct.

13 **Q.** And where you were making your request was in a
14 Verizon West state, isn't that correct?

15 **A.** Yes.

16 **Q.** Do you know whether or not any of these
17 individuals at the time you sent this e-mail would
18 be familiar with what was going on in Verizon West?

19 **A.** Well, I guess, let me rephrase that last
20 question. I don't know -- I know Verizon has a
21 Verizon East and a Verizon West and I think a
22 Verizon North and a Verizon South. I don't know

1 where Illinois is, what it is classified as.

2 **Q.** Well, let me classify it for you.

3 **A.** Okay.

4 **Q.** Verizon East is former Bell Atlantic, Verizon
5 West is former GTE. Using that as a classification,
6 you sent this e-mail to a host of people, Verizon
7 people, who were involved in Verizon East issues
8 with NCC, correct?

9 **A.** These individuals were, but they were my
10 Verizon Services rep that were handling all of my
11 states. They were handling California. These same
12 individuals Dianne McKernan had sent an e-mail about
13 a Feature Group D problem I had with long distance
14 service in California.

15 **Q.** Language distance is different than the local
16 exchange service we are talking about?

17 **A.** Well, Dianne McKernan is my rep for all of
18 these things.

19 **Q.** I understand that. She is the, if you will,
20 conduit of your point of contact. But in your
21 dealings with Ms. McKernan did you expect her to
22 know all of the technical information that may be

1 necessary to answer your question?

2 **A.** Did I expect it? Well, she has been in the
3 industry formally longer than I had as a supervisor
4 and, yeah, she seems pretty knowledgeable about
5 these things. She trained other people.

6 **Q.** Sure. But training, she wasn't training them
7 in engineering specifically, was she?

8 **A.** Well, yeah. When you are a carrier rep -- I
9 mean, not necessarily. It depends on what you
10 define as engineering. But when you are a rep at
11 ICSC, the department that handles long distance
12 carriers, you deal with ASRs, you deal with CLLI
13 codes, you deal with MUXs, those are the things you
14 do on a regular basis. This is a rep you go to when
15 your ASR is rejected; you say why and they say,
16 well, you tried to put this circuit on a wrong type,
17 you have the wrong signaling on your ASR.

18 **Q.** So giving your experience you were expecting
19 Ms. McKernan to know what the engineering was at the
20 Illinois facilities and what would be in place there
21 to ascertain your request, is that what you are
22 telling me?

1 **A.** Dianne McKernan is always very helpful and I
2 directed my question to her to ask are they going to
3 require this in Illinois.

4 **Q.** Would it be reasonable for you to expect that
5 she would know the answer to all of your questions
6 or that she would have to go out and seek assistance
7 from other people within Verizon to answer your
8 question?

9 **A.** Oh, I figured she would have to seek assistance
10 from other people. That's usually what she did.

11 JUDGE ALBERS: Off the record.

12 (Whereupon there was
13 then had an
14 off-the-record
15 discussion.)

16 MR. ROONEY:

17 **Q.** Now, when I read your e-mail, that C-032
18 e-mail, I don't see you using the term multiplexer
19 or a MUX within that e-mail, is that correct?

20 **A.** That is correct.

21 **Q.** I am going to change topics now, Mr. Lesser.
22 In early February of 2002 as we testified earlier,

1 NCC and Verizon entered into an interconnection
2 agreement, correct?

3 **A.** Yes, that's correct.

4 **Q.** And at the time that interconnection agreement
5 was entered into, even though you entered into
6 that -- NCC entered into that agreement even though
7 you believed that they were not going to provide you
8 the services you had initially requested, correct?

9 **A.** That is correct.

10 **Q.** And as I understand it, it was approximately
11 January 24 when you actually came to Verizon and
12 asked to enter into an interconnection agreement,
13 correct?

14 **A.** That is correct.

15 **Q.** And at that point in time you had not asked the
16 NPA administrator, Neustar, for NXX codes for the
17 vicinity that you wanted to serve and this is in the
18 January/February time frame, isn't that correct?

19 **A.** Yeah, I wasn't allowed to.

20 **Q.** And you weren't allowed to by the fact that you
21 didn't have an interconnection agreement?

22 **A.** That was one of the multiple reasons why, yes.

1 **Q.** What were some of the other reasons?

2 **A.** Well, for example, before you can apply for a
3 prefix, you need to have a location.

4 **Q.** Can I stop you right there for a second?

5 **A.** Sure.

6 **Q.** At the time you asked for an interconnection
7 agreement, you didn't have a location to provide
8 Verizon?

9 **A.** That is correct.

10 MR. DICKS: Can I get back to his answer?
11 Because he was interrupted. We would like to get
12 back to the multiple reasons.

13 **Q.** Sure, that's fine.

14 **A.** You need to have a location. Once you have a
15 location, you apply for a CLLI code which is a
16 location identifier that every phone company in the
17 country uses and you have to apply to Belcore for
18 that. So I applied to -- or whoever Belcore changed
19 their name to, you apply for that CLLI code. You
20 need that CLLI code before you can apply for a
21 prefix because they need to know where that
22 equipment is located so they can put this in

1 something called the Local Exchange Routing Guide.

2 And basically with all of the mumbo jumbo, the idea

3 is that when someone dials, for example, 619, 364

4 whatever, every phone company literally in the world

5 and specifically in North America needs to know how

6 to route that call. They need to know where that

7 equipment is located, what the name of the phone

8 company is, and so they have to make sure that they

9 can get to it. So if I don't have an

10 interconnection agreement, they can't get to it. If

11 I don't have a location, I can't get a CLLI code.

12 So it is one step after another that you normally do

13 all at one time.

14 **Q.** Okay. Now, let's go back to at the point in

15 time you asked for an interconnection agreement, you

16 did not have a location code, correct?

17 **A.** That is correct. Do you want to know why?

18 **Q.** We are going to get to that. It is my

19 understanding that you asked Verizon to provide you

20 with a location to interconnect, is that correct?

21 **A.** That is correct.

22 **Q.** Is that your normal practice in other states as

1 well?

2 **A.** Absolutely not.

3 **Q.** Okay. So would you say it is unique that you
4 were asking the incumbent local exchange carrier to
5 find you, NCC, a place to interconnect with its
6 network?

7 **A.** Yes.

8 **Q.** Do you know whether -- strike that. Do you
9 know whether -- I am asking for your non-legal
10 opinion on this, okay, whether or not Verizon is
11 obligated to search out a location for a CLEC to
12 interconnect with?

13 **A.** You know, in context I think Verizon is
14 required to interconnect with me at any technically
15 feasible point.

16 **Q.** Well, that's not my question. My question is
17 with your experience and you are operating in a
18 number of different states and NCC is generally, do
19 you know whether Verizon is obligated to provide you
20 with a location, to search out and to provide you
21 with a location to interconnect?

22 **A.** I think they are, if they are going to put this

1 extra restriction on. And that's why I made it very
2 clear that they are required to interconnect with me
3 at any technically feasible point. If they say no,
4 we are not going to do that, then I think it is fair
5 for me to ask the question, well, then where will
6 you allow me to interconnect. That's where my
7 question really came from. I didn't ask them to
8 find me an office. I wanted to know where do you
9 have the facilities. If you are going to require me
10 to use a dedicated interoffice facility and you know
11 I don't want to wait a year or over to have one
12 built, where do you have dedicated interoffice
13 facilities in this area.

14 **Q.** But on December 13 you received an e-mail that
15 said that you could lease fiber right from Verizon,
16 isn't that correct?

17 **A.** No.

18 **Q.** You testified to that earlier?

19 **A.** No, I received an e-mail that said, "Hi, I am
20 sorry for the delay in responding to you. It took a
21 bit of investigating to get the Verizon West policy
22 on terminating interconnection trunks on enterprise

1 facilities. Unfortunately, the West policy is the
2 same as the East. As you can see in the message
3 below, we will not terminate interconnection trunks
4 on a retail enterprise facility. I hope this
5 information will assist you in making a decision on
6 interconnecting in Illinois."

7 **Q.** Well, the other part of the e-mail which you
8 have not read yet, though, indicates the fact that
9 it was Verizon West's policy to allow a CLEC to
10 lease facilities?

11 **A.** I don't think that's true. And do you want to
12 know why?

13 **Q.** Well, your testimony speaks for itself and we
14 will move on.

15 **A.** Then I need to clarify it.

16 JUDGE ALBERS: You will get a chance on
17 redirect, I am sure.

18 **Q.** Okay. So then just going back then for my
19 other mind, you were asking Verizon to find you an
20 NCC location on which to interconnect. And as I
21 understand it, you even admit that that's not
22 something you normally do?

1 **A.** That is correct.

2 **Q.** Hypothetically, if Verizon chose a location and
3 you didn't like it, would you ask Verizon to search
4 for another location for you?

5 **A.** You know, with not knowing the full, it depends
6 on why I didn't like it. If it wasn't a secure
7 location, if it didn't have the power requirements,
8 yeah, I would come back. I mean, Verizon did give
9 me some locations and I said, well, that is not even
10 a building, that is a tower.

11 **Q.** So that would be your position, that it would
12 be up to Verizon to expend whatever resources it had
13 to to find you a location that would meet your
14 needs?

15 **A.** No, I just think Verizon should tell me where
16 they have the facilities available that they will
17 allow me to interconnect.

18 **Q.** As opposed to what you do everywhere else which
19 is you find the location and you ask if that's a
20 technically feasible point to interconnect?

21 **A.** No, no, I don't ask that question. What I do
22 in every other location I have gone to in every

1 other state, in San Diego, in Sacramento, in Los
2 Angeles, in San Francisco, in Portland, in
3 Vancouver, Washington, in Tucson, in Phoenix, I pick
4 a location, I get a lease, and this all happens
5 concurrently. I apply for a CLLI code. I apply
6 with Neustar for telephone numbers. Then at that
7 same time I submit an access service request with
8 the local exchange carrier saying I want to
9 interconnect at this location, this is what I am
10 ordering, and they process the order.

11 **Q.** Right. But in this instance you didn't do
12 that. You wanted Verizon to do the work, to point
13 to you a location in which you could interconnect,
14 correct?

15 **A.** No, no, because that's a mischaracterization.
16 I mean, I did that. In West Virginia I did that and
17 they came back and they said no, no, no, no, you
18 can't do that. So I got burned once. I learned my
19 lesson. I didn't apply for prefixes I would lose.
20 I came to Verizon and said, okay, if you are not
21 going to play by the rules every other phone company
22 in the country plays with, then where are you going

1 to allow me to interconnect.

2 Q. I appreciate that editorial comment, but my
3 question to you is you in Illinois asked Verizon to
4 find you a place to interconnect, correct?

5 MR. DICKS: Your Honor, this is
6 mischaracterizing his testimony. He has explained
7 the basis for why he did that, that this was
8 different than he had in every other state
9 circumstance. Then we get the comment that he is
10 editorializing, and I don't think it is appropriate.
11 I think the question has been asked and answered and
12 now it is being mischaracterized. His testimony is
13 clear that the reason why he did it in Illinois
14 differently was because he was burned in West
15 Virginia, and the other states were not requiring
16 him or not preventing him from going on shared
17 facilities. So it is mischaracterizing his
18 testimony.

19 MR. ROONEY: And I guess I would move on to a
20 different line of examination.

21 Q. Mr. Lesser, following on here, so you had your
22 interconnection agreement that was effective on

1 February 5. You had a request or an e-mail that had
2 been sent to Verizon shortly thereafter seeking to
3 be up to speed within 30 days. And as I understand
4 it, though, looking at the documents I have before
5 me, you didn't apply to seek an NXX code from
6 Neustar until May, May 12, I believe?

7 **A.** That is correct.

8 **Q.** And at that point in time, it was only at that
9 point in time then, that an NXX code was -- and, of
10 course, Verizon couldn't apply for the NXX code for
11 NCC, correct?

12 **A.** That's correct.

13 **Q.** And so from the point in time that it executed
14 and the interconnection agreement was put in place,
15 then it was May 12, approximately three months
16 later, that you applied for the NXX code. It was
17 given and then subsequently once you received
18 everything you needed and provided to Verizon,
19 Verizon immediately had you up and running in August
20 of 2002?

21 **A.** Yes. Did you want to know why I put the 30
22 days?

1 **Q.** No, that's what you had mentioned in your
2 e-mail.

3 **A.** But you had asked the question.

4 **Q.** Fair enough. Going back to your concerns about
5 NCC being maltreated and Verizon trying to delay
6 your efforts here and that you want to see that this
7 never happens to other parties, do you recall that
8 testimony?

9 **A.** Yes.

10 **Q.** Isn't it true that NCC was willing to settle
11 this matter strictly on the basis of it recovering
12 its attorneys' fees?

13 **A.** No.

14 **Q.** Well, I would like to present to you, and I
15 will mark it as Verizon Lesser Cross Exhibit Number
16 1, a copy of an e-mail that was sent by your counsel
17 to our counsel.

18 MR. DICKS: Your Honor, we are going to object
19 to the introduction of this exhibit. It is a
20 violation of the rule against introducing settlement
21 offers and settlement discussions whether it's pre
22 or during litigation, and it is highly

1 inappropriate. It was actually addressed in the
2 motion to strike. We did not get a ruling on it.
3 And whether or not Mr. Lesser was ever considering
4 settling for attorneys' fees or costs or otherwise
5 is irrelevant to the issues in the case regarding
6 liability.

7 MR. ROONEY: I do find it a little ironic, Your
8 Honor, because in Mr. Lesser's testimony he
9 describes they offered settlement, Verizon didn't
10 accept. They were the one that opened that door
11 with both feet regarding the settlement issue. And
12 there was some claim of Verizon didn't want to
13 settle. Our claim is they opened the settlement
14 discussions by virtue of their testimony. And I
15 think for a full, complete airing of what it was all
16 about and giving Mr. -- I am sorry, NCC's concerns
17 about ill treatment of CLECs and why they are
18 continuing to prosecute this case, I thought it
19 would be informative to understand that at the end
20 of the day NCC didn't want anything other than
21 attorneys' fees in order to get out of this case.

22 MR. DICKS: Your Honor, my e-mails to counsel

1 exploring the possibility of settlement as opposed
2 to Mr. Lesser's discussions or demands are highly
3 inappropriate. You know, this began with Mr. Lesser
4 trying to interconnect without any dispute. And as
5 this case has progressed he has tried multiple times
6 to resolve this thing informally, but those attempts
7 to resolve this informally are not an appropriate
8 topic for cross examination. It runs contrary to
9 policy to try to settle a case short of litigation
10 to allow counsel to introduce my e-mails to counsel
11 exploring the possibility of settlement.

12 MR. ROONEY: I couldn't agree with you more.
13 Normally, I wouldn't even be here. But it is
14 Mr. Lesser's testimony that completely opened the
15 door. He talks about settlement. He talks about
16 the fact that Verizon rejected his settlement offer
17 and then -- let me find it here, again I am sorry
18 for the -- here on what would be page 13 as
19 Mr. Dicks has paginated, you mention a demand letter
20 and offer of settlement that was sent to Verizon's
21 legal department.

22 "Did Verizon take your offer of

1 settlement?"

2 Answer: "No, they refused."

3 "What did they do with your offer of
4 settlement?"

5 Again, there is discussions about
6 settlement up and down.

7 MR. DICKS: This is happening -- first of all,
8 happening in West Virginia and the only reason it
9 was brought up is because counsel in West Virginia
10 made that record, Mr. Hartmann's letter, a public
11 document by filing it as an attachment to a cross
12 complaint in West Virginia. All right. They are
13 the ones who chose to introduce that and to put that
14 into the public record. Mr. Lesser was just trying
15 to explain the basis for that, not only
16 Mr. Hartmann's letter but the fact that I had wrote
17 a letter in advance of that. And that's why it
18 appears in this case. I mean, they opened the door
19 on that, not us. And now for us in this case to
20 have my e-mail sent across --

21 MR. ROONEY: With regards to Mr. Dicks's
22 e-mail, the only thing I would understand is I am

1 sure that Mr. Dicks didn't do that sua sponte but
2 did that with the authority of NCC.

3 MR. DICKS: We have already stipulated in this
4 case, Your Honor, that we are only seeking our
5 attorneys' fees in this case. That's still the
6 case, attorneys' fees and costs.

7 MR. ROONEY: I disagree. You are also seeking
8 to have some finding made against Verizon regarding
9 its conduct and injunctive relief. My question
10 earlier went to whether you are seeking damages as
11 well, and I accepted your stipulation. But in
12 addition to the damages claim, Mr. Lesser is seeking
13 other relief as set forth in his testimony.

14 MR. DICKS: My letter to Ms. Naumer was
15 addressing the issue of the attorneys' fees. If we
16 couldn't get over the attorneys' fees issues, then
17 we would not even be able to get to the issue of
18 injunctive relief.

19 JUDGE ALBERS: Okay. That's enough for now.

20 (Pause.)

21 JUDGE SHOWTIS: It is my reading of the
22 testimony that the reference to the offer of

1 settlement that you mention, Mr. Rooney, on page 13
2 of the rebuttal testimony of Mr. Lesser pertains to
3 some offer in West Virginia, not in Illinois.

4 MR. DICKS: That's correct.

5 JUDGE SHOWTIS: I don't know how that opens the
6 door to some offer in Illinois.

7 MR. ROONEY: Okay, fair enough, Your Honor.
8 Let me withdraw that. However, I would like to on a
9 different basis -- well, give me one second, Your
10 Honor.

11 Your Honor, I would like to approach the
12 witness again for a different basis with regard to
13 these documents, and Mr. Dicks can respond before I
14 produce it. In this document it contains an
15 admission, and under Illinois law an admission is
16 admissible from a party, and I can give that for
17 your in camera review before we go ahead. But at
18 the end of the day there is an admission here
19 regarding NCC's view of what Verizon did or did not
20 do. And we would be more than happy to provide case
21 law that, even in a settlement proceeding, where
22 there is an admission by a party as to a certain

1 point, that that admission is admissible.

2 JUDGE ALBERS: You attached that to your
3 response, or I am sorry, your reply?

4 MR. ROONEY: That is correct, Your Honor. Do
5 you want a copy here?

6 JUDGE ALBERS: Sure.

7 MR. DICKS: Do you have a copy?

8 MR. ROONEY: And I point you to the third line
9 of that document.

10 MR. DICKS: Your Honor, I would like to address
11 the offer of admission because there is no such
12 admission. I am attempting here to get attorneys'
13 fees and acknowledge that they are not going to
14 force any policy down his throat, that there is no
15 policy in effect for a shared MUX or a dedicated
16 MUX, regardless, so it is not going to happen to him
17 ever again. That's why I want the acknowledgment.
18 So to use that as a settlement and admission is
19 inappropriate.

20 JUDGE ALBERS: I understand, and Judge Showtis
21 and I are going to sustain the objection. Neither
22 one of us is comfortable with what this is, to agree

1 that this simply is -- neither one of us is
2 comfortable in agreeing that this is in fact an
3 admission, given that it is in fact a part of the
4 settlement discussion. We are leery of the
5 precedent that would set.

6 MR. ROONEY: Fair enough.

7 Your Honor, I don't know what would be
8 procedurally the best approach to take so I would
9 take your advice on this. We have propounded on NCC
10 and Mr. Lesser a number of requests to admit. We
11 are not looking to have them all admitted into
12 evidence in this case, but there are certainly
13 several that we would like to have admitted into
14 evidence in this proceeding. And I can attach the
15 whole documents where the responses came back to us
16 from NCC and identify the particular request to
17 admit that we are asking to be admitted into
18 evidence.

19 MR. DICKS: My response to that?

20 JUDGE ALBERS: I want to try to understand.
21 You have got a packet or a number of requests to
22 admit which you want to admit. You only want to

1 have a few of them admitted into the record.

2 MR. ROONEY: Right, correct, but they are part
3 of an entire document. We can provide you with the
4 exact number of the items we are asking to be
5 admitted into evidence based upon the filing that
6 was made.

7 JUDGE ALBERS: Like multiple ones on the same
8 page kind of thing?

9 MR. ROONEY: Well, there are multiple pages and
10 there is half a dozen numbers in two separate
11 documents that we would like to add those specifics.
12 And we didn't want to cut and paste them up because
13 we wanted to make sure that we had the entire
14 information in the sign off by Mr. Lesser or NCC
15 regarding their answers.

16 MR. DICKS: It was my understanding that
17 documents such as interrogatory responses, requests
18 for admission responses, responses to document
19 demands, that those are not properly received as
20 exhibits. They are read into evidence as testimony,
21 answers and questions, and that it is inappropriate
22 to receive them into evidence as exhibits themselves

1 because of the experiencing that they may be on.

2 There is no dispute as to Mr. Lesser requiring to
3 verify the responses. And we stipulate, in fact it
4 is a matter of record, that all our responses are
5 verified.

6 I have the same thing and my plan was,
7 according to appropriate procedure, read the
8 questions and answers into the record so that they
9 are part of the record. It is inappropriate to
10 receive them as exhibits.

11 MR. ROONEY: I am just trying to treat common
12 practice here, Your Honor, with regard to DR
13 requests.

14 JUDGE ALBERS: I am concerned and I am sure
15 Mr. Showtis is concerned too about admitting in a
16 document that only portions of should be considered
17 evidence.

18 MR. ROONEY: Could we for purposes of
19 expediting this, if we were to redact from the
20 document those portions we are not seeking to put
21 into evidence so the full question and full answer
22 is there and that way it is within the body of the

1 document that we received, would that be helpful?

2 MR. DICKS: Why not just read it into the
3 record?

4 JUDGE ALBERS: Often to help save time, if
5 there is a lot of material, we will do something
6 similar to this with data requests.

7 MR. DICKS: If they can be submitted to me in
8 redacted form, I can take a look at them, I suppose.

9 JUDGE ALBERS: Is your cross done now?

10 MR. ROONEY: That would wrap up my cross
11 examination of Mr. Lesser.

12 JUDGE SHOWTIS: Off the record.

13 (Whereupon there was
14 then had an
15 off-the-record
16 discussion.)

17 MR. ROONEY: That's all the cross examination
18 we have for Mr. Lesser.

19 JUDGE ALBERS: You can put that on the record,
20 Carla.

21 I just have one question for you,
22 Mr. Lesser, before we break for lunch.

1 EXAMINATION

2 BY JUDGE ALBERS:

3 Q. Do you happen to recall what docket it was in
4 which you got your certificate to operate in
5 Illinois?

6 A. No, I don't, sorry.

7 EXAMINATION

8 BY JUDGE SHOWTIS:

9 Q. Mr. Lesser, I would just like to go back to, I
10 guess it is, Exhibit C-034 and Mr. Rooney asked you
11 some questions with regard to, I guess it was, an
12 e-mail or a response from Mr. Bartholomew to
13 Ms. McKernan where Mr. Bartholomew stated that "VZ
14 West, Verizon West, does not require a fiber build
15 in order to interconnect. CLECs may use leased
16 facilities, collocation or fiber." I can't recall
17 if you indicated at what period of time that you
18 read that response, but could you clarify again when
19 you read that response and, secondly, could you
20 clarify what your interpretation of that answer is
21 or that statement is?

22 A. I read that response in basically preparing for

1 litigation after the decision was made after the
2 Steven Hartmann letter exchanged with Mr. Dicks
3 where they said if you have a problem with this
4 procedure, T-up and take us to court in Illinois or
5 any other jurisdiction. So at that point Mr. Dicks
6 had me review every document, every e-mail that I
7 had had, and then really looked it over and went
8 piece by piece. And while printing it out, I said,
9 wait a second, here are a bunch of other e-mails and
10 I looked at all the people and what was said.

11 What that was meant by in my interpretation
12 of Charles Bartholomew, as I was trying to express
13 before, is Verizon West Virginia took a position --
14 I moved into a facility in West Virginia that
15 already had fiber optics and had a MUX and that's
16 how this whole thing came about, because Verizon
17 wouldn't let me use it because they said that's a
18 shared MUX, meaning that it was used by -- retail
19 customers are using the exact same piece of
20 equipment that I would like to use and you can't do
21 that, you have got to get your own MUX or you have
22 to get your own dedicated facility. And so Charles,

1 not knowing the full history, obviously, when
2 someone said you have to do a fiber build, said,
3 well, no, you don't have to do a fiber build because
4 there is already a MUX there that's, quote,
5 dedicated; it can be used. And when Diana asked the
6 question this customer is interested in using an
7 existing enterprise services MUX at this location;
8 would he be able to place trunks on this type of
9 facility, meaning would he be able to put service on
10 this type of equipment, Verizon just has a policy
11 against it, she clarified the question because it
12 was clear by his answer that we were talking apples
13 and oranges. So that is why in my opinion she
14 asked the follow-up question which then he came back
15 and gave an answer saying no, we have got the same
16 policy and you have got to use a dedicated facility,
17 that the policy is the exact same.

18 **Q.** Just so I am clear, Mr. Bartholomew did not
19 state that directly, did he?

20 **A.** To me?

21 **Q.** Or in any of the e-mails or at least to
22 Ms. McKernan in the e-mails that were sent to you?

1 **A.** I would have to look back. I know -- well, her
2 final note, she told it to Charles Bartholomew. I
3 mean, Charles Bartholomew told it to Dianne McKernan
4 and Dianne McKernan responded back we will not
5 terminate interconnection trunks on a retail
6 enterprise facility. So what had happened is I
7 asked a question of Dianne; Dianne forwarded my
8 e-mail to multiple Verizon employees. They kind of
9 talked about it themselves, responding back and
10 forth, and then finally I got kind of the whole
11 e-mail exchange with the conclusion up on top that
12 was the final conclusion after all their talking
13 back and forth. Like, you know, I think there was
14 something that even said should it go to Dee, should
15 it go to Charles.

16 MR. DICKS: Your Honor, at the bottom of page
17 C-033 there is an additional note from
18 Mr. Bartholomew. He did say that.

19 JUDGE SHOWTIS: I see that now.

20 Okay. That's all I had.

21 MR. ROONEY: Your Honor, one second, I may have
22 just one additional question. Sorry.

1 CROSS EXAMINATION (Continued)

2 BY MR. ROONEY:

3 Q. Mr. Lesser, once you received service from
4 Verizon in August of 2002, you began receiving
5 service?

6 A. Via the interconnect. We had our interconnect.

7 Q. Right.

8 MR. DICKS: This is beyond the scope of recross
9 at this point.

10 MR. ROONEY: It is not even recross. It is
11 still cross, Your Honor.

12 MR. DICKS: No, he passed that. All right. I
13 withdraw my objection.

14 MR. ROONEY: Thank you.

15 MR. DICKS: If you have any questions, go ahead
16 and ask them.

17 MR. ROONEY: I appreciate that.

18 Q. Once you began and were actually interconnected
19 and providing your own service in August of 2002, am
20 I correct that the service Verizon was providing you
21 is the service that you requested in December of
22 2001?

1 **A.** Yes.

2 MR. ROONEY: Thank you. I have no further
3 questions.

4 MR. DICKS: I may have some additional, but it
5 is my understanding you wanted to break.

6 JUDGE ALBERS: Yeah, I was going to say, we
7 will take up your redirect coming back from lunch
8 and I have got 20 til 1:00, so why not let's take
9 until 20 til 2:00.

10 JUDGE SHOWTIS: Yeah, we will come back at 20
11 til 2:00 and maybe before you come back, if you want
12 to try to talk to Mr. Dicks about the portions of
13 those responses that you want to get into the
14 record.

15 MR. ROONEY: Great.

16 (Whereupon the hearing
17 was in recess from 12:40
18 a.m. until 1:40 p.m.)

19

20

21

22

1 AFTERNOON SESSION

2 JUDGE SHOWTIS: We can go back on the record.

3 REDIRECT EXAMINATION

4 BY MR. DICKS:

5 Q. Mr. Lesser, you were asked some questions on
6 examination by opposing counsel as to the
7 interconnection process and as a general rule that
8 being something that occurred state to state, do you
9 recall that?

10 A. Yes, I do.

11 Q. Was that your experience in dealing with
12 Verizon?

13 A. No.

14 Q. Would you describe for the judge that
15 difference, the difference in experience that you
16 found dealing with Verizon in trying to
17 interconnect?

18 A. No matter what state, whether it be New York,
19 whether it be West Virginia, whether it be Illinois
20 or even California, I was instructed to always deal
21 with Dianne McKernan in Verizon Services
22 Corporation. And in fact at one point I even tried

1 to contact a state representative in California and
2 I was directed back to Dianne McKernan. So I have
3 never had a dealing specifically in Illinois and any
4 jurisdiction, I have never had any dealing with
5 anyone at any state level. All policies and
6 procedures and any dealings were always done at
7 Verizon corporate, Verizon Services level.

8 **Q.** During the entire process of attempting to
9 interconnect in Illinois, were you ever put in
10 contact with a Verizon Illinois employee?

11 **A.** No.

12 MR. ROONEY: I object to the extent that there
13 is no such entity as Verizon Illinois.

14 **Q.** How about Verizon North and Verizon South?

15 **A.** I am not sure where Verizon North and Verizon
16 South is. I never spoke to any individual at all
17 located within the state of Illinois.

18 **Q.** Did you ever speak to anybody who represented
19 themselves as being an employee of Verizon North and
20 Verizon South, Inc., or somebody from the ILEC
21 dealing with Illinois?

22 **A.** No.

1 **Q.** Counsel examined you at length on the issue of
2 requesting of Verizon that they provide you with the
3 identity of some location where you could
4 interconnect. Do you recall that?

5 **A.** Yes.

6 **Q.** And you also testified that that wasn't
7 something that you normally did, correct?

8 **A.** Correct.

9 **Q.** Why did you do it? Why did you ask Verizon to
10 identify places where you could interconnect if you
11 didn't do it with other ILECs?

12 **A.** If I hadn't have done that, Verizon would have
13 bankrupted me.

14 **Q.** How?

15 **A.** In West Virginia I did what I normally do. I
16 get an office and then I have tried to interconnect
17 with the local exchange carrier. Well, what Verizon
18 did is I got my office, I paid for rent, I had
19 employees, I had my equipment all set up, and a year
20 later I still wasn't interconnected. It took about
21 a year. So we are a small company. I didn't have
22 the resources to just pick an office and say, okay,

1 I hope Verizon will interconnect with me, I hope
2 that there is a dedicated facility there.

3 So, instead, I decided to completely change
4 the order that I do everything because normally I do
5 everything current. I get the office, I apply for
6 the CLLI code, I put in the access service request
7 and it is just all done and it moves very quick.
8 This, I started with Verizon saying, okay, where do
9 you have dedicated facilities that I can use for
10 interconnection so I don't have to either wait for a
11 fiber build or wait for a dedicated entrance
12 facility to be built. Just tell me where you guys
13 have these and that's where I will find an office.
14 I haven't picked an office yet and I can easily pick
15 an office. I can go in any building in Chicago.

16 **Q.** Do you recall again questions regarding what
17 happened in West Virginia, do you recall that in
18 West Virginia they initially said, Dianne McKernan's
19 organization said, you are not going to interconnect
20 shared facilities, is that correct, a dedicated one?

21 **A.** That's correct.

22 **Q.** Do you also recall whether they made an

1 exception to that rule?

2 **A.** Yes, they did. I think it was an eleven and a
3 half month time frame they made an exception and
4 they did turn up my trunks on a shared facility.
5 They told me that they made an exception and that
6 they would do it and while they are finishing the
7 completion of the dedicated facilities, the
8 dedicated MUX.

9 **Q.** Were you trying to avoid a similar eleven-month
10 delay in Illinois by requesting a site?

11 **A.** Yes. I mean, now the situation has changed
12 with prefixes and they are very strict, that if you
13 apply for a prefix, you have to turn it up within
14 approximately six months. If you don't turn it up,
15 you have to hand it back. So if I just rented an
16 office and then Verizon came back with the same
17 policy which they already told me that's what the
18 rules were, that any prefix I applied for I would
19 have to give back to the North American Numbering
20 Plan Administrator because if you have to build a
21 dedicate facility, they told me it could take nine
22 months to a year, maybe longer, 15 months. I would

1 be handing those prefixes back starting at day one
2 again, and I don't have the resources to just have
3 an operation with no revenue and sit idle for that
4 period of time, when normally I should be able to
5 just pick a place and if the facilities are there,
6 just interconnect.

7 **Q.** Counsel also went through these e-mails, C-033,
8 Exhibit C-034, and referred to the string of e-mails
9 that were attached. At any point in time did you
10 try to -- before filing a lawsuit, I am sorry, in
11 Illinois with the Commission -- did you attempt to
12 clarify the position that Verizon was taking with
13 regard to this policy nationwide?

14 **A.** Yes.

15 **Q.** All right. And do you have Exhibit T in front
16 of you?

17 **A.** Yes.

18 **Q.** And is that your attempt through your counsel
19 to clarify the whole issue regarding shared facility
20 and dedicated facility and wholesale fiber build out
21 and what not?

22 **A.** Yes, there are a lot of terms being used now.

1 I wanted to make sure that there was no
2 misunderstanding before I proceeded on a path that I
3 wanted to avoid because there really was no upside.

4 **Q.** Until that point in time, Exhibit T is February
5 11, had you received any communication from
6 Ms. McKernan that, oh, there was a mistake, there
7 was a miscommunication, people didn't know what I
8 was talking about, we weren't talking on the same
9 page and line, there really isn't any policy,
10 anything like that?

11 **A.** No, not at all, not from her nor anyone.

12 **Q.** Did you eventually receive a copy of Exhibit S,
13 the response from Mr. Hartmann to the Exhibit T
14 exhibit?

15 **A.** Yes.

16 **Q.** And prior to February 14 did you get
17 correspondence information from Ms. McKernan
18 indicated, gee, I am sorry, we made a mistake, there
19 was some miscommunication between me and Mr.
20 Bartholomew or between me and Ms. Allison or anybody
21 else and there really isn't a policy?

22 **A.** No.

1 **Q.** Did this letter confirm to you the existence of
2 the policy?

3 **A.** Absolutely. A hundred percent. I knew it.
4 This was the letter that spelled it out.

5 **Q.** Page one, the very last sentence, very last
6 line, talks about the shared end user facility?

7 **A.** Yes.

8 **Q.** And then the following page, the sixth line
9 down, Mr. Hartmann says in no way was Verizon
10 obligated to provide an interim arrangement, this
11 arrangement?

12 **A.** Yes, that's correct.

13 **Q.** And the next line says it was a courtesy?

14 **A.** That's absolutely correct.

15 **Q.** With the understanding that you would go to the
16 dedicated facility eventually?

17 **A.** Yes.

18 **Q.** And the next paragraph -- oh, by the way, in
19 Exhibit T are we all in agreement that a reference
20 to, specific reference, to Illinois was never made?
21 You just talked about other venues?

22 **A.** Yes, we didn't mention Illinois at all. We

1 were just mentioning nationwide, are they going to
2 have this policy.

3 **Q.** And yet you have a specific reference by
4 Mr. Hartmann to the Illinois statute?

5 **A.** Yeah, in that second paragraph on the second
6 page he says, "If NCC wants to litigate or arbitrate
7 in Illinois or some other jurisdiction over what the
8 appropriate protocol for interconnection should be,
9 they should T-up that issue in that jurisdiction,
10 not hold the Verizon network in West Virginia
11 hostage in an attempt to extort connections
12 elsewhere.

13 **Q.** Now, let me ask you this. In the next
14 paragraph down, the fifth line on the left-hand
15 column, well, starting from the right-hand column,
16 it says dedicated entrance facility. That wasn't
17 the first time, was it, that you heard the term
18 dedicated facility?

19 **A.** No, I had heard that term verbally in
20 conference calls. I had heard that in numerous
21 e-mails. It was understood that I had to have a
22 dedicated facility. And even when there was a fiber

1 MUX in the building in West Virginia, I wasn't
2 allowed to use it. And this was Verizon's corporate
3 policy and expressed by senior counsel.

4 **Q.** Now, why does it even matter, considering all
5 that you have to do to get started with, let's say
6 for instance Illinois, why does it even matter that
7 there is this policy as you call it to have a
8 dedicated facility and not be able to share even if
9 there is existing capacity?

10 **A.** Well, it puts you a year behind, because
11 instead of just finding an office -- and we are
12 smart. We don't pick an office in the area where we
13 know there isn't facilities. We go to an office
14 where there probably already is a fiber MUX like I
15 did in West Virginia, so there would be no question
16 whatsoever that there was technically -- you know,
17 as required in the Telecom Act that they could
18 technically feasibly interconnect with me. So you
19 go into that office, you get an office space. Well,
20 not knowing how they are going to classify this MUX
21 or this facility, you really have to go to Verizon
22 first and say, okay, what is that MUX, is it a

1 shared MUX, is it a dedicated MUX? And having to
2 wait and do that really sets you back because
3 normally you don't have to do that. So you can't
4 even attempt to find an office unless you are
5 willing to take the risk that that MUX or even if
6 there isn't a MUX is dedicated versus shared.

7 MR. DICKS: Nothing else, Your Honor.

8 MR. ROONEY: A few questions.

9 RECROSS EXAMINATION

10 BY MR. ROONEY:

11 Q. I am correct that you weren't required to build
12 out the facilities that you are currently utilizing
13 from Verizon, is that right?

14 A. That is absolutely correct.

15 Q. So Verizon did not require you to build out
16 facilities in order to provide a service when the
17 interconnection service was going forward in August
18 of 2002, correct?

19 MR. DICKS: Vague as to point in time, Your
20 Honor.

21 MR. ROONEY: Pardon me?

22 MR. DICKS: Vague as to point in time.

1 MR. ROONEY:

2 Q. I just said as of August of 2002 when the
3 beginning of the interconnection agreement took
4 place or the interconnection became active and you
5 began providing or having service?

6 A. Yeah, in August of 2002 Verizon changed their
7 tune and did not require it.

8 Q. Well, let's go back to changing tune,
9 Mr. Lesser. On December 13 you received an e-mail
10 from Ms. McKernan which attempted to articulate an
11 answer to your question of December 7, correct, and
12 we are going back to C-033?

13 A. That is correct.

14 Q. And as I read her e-mail to you, her e-mail
15 reflected the fact that her answer directed you to,
16 as you can see in the message below, it was asking
17 you to read beyond just her message. And if you
18 read beyond her message, in fact, on that same
19 e-mail Mr. Bartholomew reflected that Verizon West
20 does not require a fiber build in order to
21 interconnect?

22 A. Oh, but that's not what your question was.

1 Your question was, was this a requirement of a
2 dedicated facility, in August of 2002 did they
3 require the use of a dedicated facility. And this
4 e-mail, well, yes, it did answer the question was a
5 fiber build required. The first one is at 4:22 p.m.
6 on 12/13, Charles Bartholomew made it clear we are
7 from product management, that Verizon West Virginia
8 has the same policy as the east, the CLECs may not
9 terminate interconnection facilities on a retail
10 facility.

11 **Q.** But that's with respect to the follow-up
12 question that went back and forth between Dianne and
13 the intervening e-mail, correct?

14 **A.** Right, and that e-mail was from 12/12. I guess
15 on the 6th it says, "Hi, Charles, thank you for
16 responding so quickly."

17 **Q.** You don't need to read it. I think it speaks
18 for itself, as you said previously. But at that
19 point in time Mr. Bartholomew was responding to a
20 separate question from Ms. McKernan, correct?

21 **A.** Yes, he was.

22 **Q.** But with respect to --

1 **A.** Part of that e-mail.

2 **Q.** But with respect to Mr. Bartholomew's December
3 11 e-mail, it was responding to what your question
4 was presented to Verizon on December 7?

5 MR. DICKS: That calls for speculation, Your
6 Honor.

7 MR. ROONEY: Well, we see a lot of it in his
8 testimony in terms of what he believes other people
9 said.

10 MR. DICKS: As phrased, that question calls for
11 speculation.

12 MR. ROONEY: Well, we have asked and answered
13 that question earlier today and he gave us an
14 answer.

15 **Q.** With regard to your claim about that it would
16 be -- and I use the term that you would be
17 bankrupted here in Illinois if you had to pick a
18 location and Verizon didn't agree to it or
19 something. Bankrupted, I believe, was your term?

20 **A.** Yeah, that's correct.

21 **Q.** Currently how many facilities do you purchase
22 from Verizon or what types?

1 **A.** We purchase T1s from Verizon, DS1s.

2 **Q.** And those DS1s have been purchased since August
3 of 2002, correct?

4 **A.** That is correct.

5 **Q.** Am I also correct that there has been zero
6 minutes of use recorded on the local exchange
7 portion of those facilities from the facilities you
8 lease from Verizon?

9 **A.** I don't know what Verizon has recorded.

10 **Q.** Do you have any reason to believe there has
11 been anything other than zero minutes of use for
12 those local exchange portions of the facilities you
13 are purchasing from Verizon?

14 **A.** Yes, we have made calls.

15 **Q.** And if you had made calls, would you expect to
16 be billed for that?

17 **A.** Yes, but we have never received a bill.

18 MR. ROONEY: I have nothing further.

19 MR. DICKS: None from NCC.

20 JUDGE SHOWTIS: Just one question.

21

22

EXAMINATION

BY JUDGE SHOWTIS:

Q. Let's go back to C-033 and C-034. Just so I understand your interpretation of what Mr. Bartholomew was indicating to Ms. McKernan, turning to C-034, Mr. Bartholomew indicated that Verizon West does not require a fiber build in order to interconnect; CLECs may use lease facilities, collocation or fiber. Then turning back to C-033 he indicated on December 13, 2001, we received word from product management that the Verizon West policy is the same as the east. The CLEC may not terminate interconnection facilities on a retail facility.

I guess my question is do you see a conflict in those two responses and, if so, explain where you see the conflict?

A. No, because it is kind of -- it is confusing the way these e-mails show up, and that's why I even frankly missed a lot of it at the beginning because it kind of goes my e-mail but then it jumps to the beginning ones, and you almost just have to look at the dates. Where I sent my question on December 7

1 and Charles Bartholomew responded to Dianne McKernan
2 on December 11 that Verizon doesn't require a fiber
3 build in order to interconnect, well, then Dianne
4 McKernan asked him a follow-up question on December
5 12. "Hi, Charles, thank you for responding so
6 quickly. This customer is interested in using an
7 enterprise services MUX at this location. Would we
8 be able to place the trunks on that type of
9 facility?" So she asked a follow-up question
10 knowing what we had gone through in New York, what
11 Core had gone through in Maryland, what we had gone
12 through in West Virginia. And then Charles
13 responded to that on the 13th after he has had some
14 numerous e-mails that said, "Dianne, we received
15 word from product management that Verizon's West
16 policy is the same as the east. The CLEC may not
17 terminate interconnection facilities on a retail
18 facility." Then on December 13 Dianne McKernan said
19 see, we will not terminate interconnection trunks on
20 a retail enterprise facility. So she came back and
21 said this same policy, you know, it is no different
22 in New York, it is no different than the Core had in

1 Maryland, it is no different in West Virginia, it is
2 going to be the same in Illinois. So, you know, be
3 prepared to either go into a place that already has
4 a dedicated entrance facility, which doesn't seem
5 like there are many of those in the entire state, or
6 be prepared to wait the time to build one which
7 could take you, you know, 6 months, 12 months, 15
8 months, who knows.

9 JUDGE SHOWTIS: That's all I had.

10 JUDGE ALBERS: You may step down.

11 (Witness excused.)

12 JUDGE SHOWTIS: Call your next witness.

13 MR. DICKS: Call Mr. Dawson.

14 **DOUGLAS DAWSON**

15 called as a Witness on behalf of North County
16 Communications Corporation, having been first duly
17 sworn, was examined and testified as follows:

18 **DIRECT EXAMINATION**

19 **BY MR. DICKS:**

20 **Q.** Mr. Dawson, would you state your name and spell
21 your last name for the record, please.

22 **A.** Douglas Dawson, D-A-W-S-O-N.

1 **Q.** You have had an opportunity to review your
2 original and revised testimony, both direct and
3 rebuttal in this case?

4 **A.** Yes.

5 **Q.** Do you adopt that as your own?

6 **A.** Yes.

7 **Q.** Any corrections other than the withdrawal of
8 certain portions that you indicated in your prior
9 correspondence?

10 **A.** No.

11 MR. DICKS: Subject to the motions to strike
12 that was granted, I ask that the direct and rebuttal
13 testimony of Mr. Dawson with those portions stricken
14 be received along with the exhibits referred therein
15 that were not stricken.

16 MR. ROONEY: No objection.

17 JUDGE ALBERS: We can go off the record for a
18 minute.

19 (Whereupon there was
20 then had an
21 off-the-record
22 discussion.)

1 JUDGE ALBERS: Back on the record.

2 For clarity, Mr. Lesser's direct and
3 rebuttal testimony will be identified as NCC
4 Exhibits 1 and 2, respectively. There is a
5 corrected version of his rebuttal testimony that
6 will be forthcoming probably by tomorrow.

7 MR. DICKS: Page numbers intact. I will call
8 tomorrow as soon as we are out of here.

9 JUDGE ALBERS: We will admit NCC Exhibit 1, the
10 direct testimony, and those attached exhibits which
11 are not stricken pursuant to the Verizon motion to
12 strike, and we will wait until tomorrow when we get
13 the final version of NCC Exhibit 2.

14 MR. DICKS: Thank you.

15 (Whereupon NCC Exhibit 1
16 was marked for purposes
17 of identification as of
18 this date and admitted
19 into evidence.)

20 JUDGE ALBERS: With regard to Mr. Dawson's
21 testimony, you said you had no objections to
22 anything else?

1 MS. NAUMER: No objection to it coming into the
2 record.

3 JUDGE ALBERS: I want to go ahead and hear any
4 cross on that before we officially rule on this.

5 MS. NAUMER: Okay.

6 CROSS EXAMINATION

7 BY MS. NAUMER:

8 Q. Good afternoon, Mr. Dawson.

9 A. Hello.

10 Q. Prior to getting into anything specific to this
11 case, there has been a lot of discussion with
12 Mr. Lesser this morning regarding the normal
13 protocol for interconnection, and I would like to
14 just ask you, based on your professional experience,
15 if you are also in agreement with what the normal
16 protocol is, so I can make sure that everyone is on
17 the same page, okay.

18 So the first thing that happens in an
19 interconnection is the ILEC and the CLEC enter into
20 what's called an interconnection agreement, is that
21 correct?

22 A. Correct.

1 **Q.** And the interconnection agreement can be either
2 negotiated between the parties or a CLEC can opt
3 into what would be a pre-existing agreement between
4 the ILEC and another CLEC, is that correct?

5 **A.** Correct.

6 **Q.** If the parties choose to negotiate and do not
7 have agreement on what the provisions should be,
8 they have the opportunity, subject to certain legal
9 parameters, to have the state commission arbitrate
10 those issues, is that correct?

11 **A.** Correct.

12 **Q.** And if arbitration does occur, the state
13 commission does issue rulings on whatever issues
14 were in dispute, is that correct?

15 **A.** Correct.

16 **Q.** Now, the interconnection agreement is a
17 contract, is that your understanding?

18 **A.** Yes, it is.

19 **Q.** It sets forth the obligations of both parties?

20 **A.** Correct.

21 **Q.** Both parties sign it?

22 **A.** Yes.

1 **Q.** Both parties -- they are joint petitioners and
2 joint petitioners when the agreement gets filed with
3 whatever state commission?

4 **A.** Generally, the ILEC files it but they are joint
5 petitioners, yes.

6 **Q.** If there is any objections to any portion of
7 the interconnection agreement, both parties have an
8 opportunity to raise that at the time the agreement
9 is filed with the commission, is that correct?

10 **A.** That's correct.

11 **Q.** Now, do you know in Illinois whether the
12 Commission staff actually intervenes and
13 participates in those cases?

14 **A.** They have sometimes. I don't know about this
15 case, but they have in the past. There has been
16 disputed agreements here, so.

17 **Q.** And again I am talking generally. I don't want
18 to get specific yet. And is it your understanding
19 when the Commission staff has participated in those
20 cases, they have provided a written recommendation
21 to the Commission on whether or not the agreement
22 should be approved?

1 **A.** Yes.

2 **Q.** And ultimately the Commission is going to
3 approve the agreements based on certain legal
4 parameters, is that correct?

5 **A.** Correct.

6 **Q.** And is it your understanding, I know you are
7 not an attorney, but is it your understanding that
8 in most cases those legal parameters are whether it
9 is in the public interest, convenience and
10 necessity?

11 **A.** That's the general way they judge, yes.

12 **Q.** And if the agreement has been arbitrated, there
13 are certainly additional requirements that need to
14 be satisfied as well?

15 **A.** Yes.

16 **Q.** Do you know of any instance when a CLEC has
17 actually completed an interconnection prior to
18 having an effective interconnection agreement with
19 the state commission?

20 **A.** You mean completed physical interconnection?

21 **Q.** Yes.

22 **A.** No, I am not aware of any. Well, did you say

1 before they have -- before the Commission approves
2 or before they have signed an interconnection?

3 **Q.** Before they have it -- well, you know, let me
4 clarify because that's a good point. There are
5 really two points in time, aren't there? One point
6 is when the parties have signed the agreement itself
7 and that's an effective point for the agreement,
8 correct?

9 **A.** Yes. And I know parties who then have moved
10 forward with facilities before the Commission rubber
11 stamped the approval, so.

12 **Q.** Do you know whether any of those CLECs have
13 moved forward and completed their interconnection
14 prior to actually signing the agreement?

15 **A.** Not before signing the agreement, no.

16 **Q.** Do you know of instances when they have
17 completed the physical interconnection prior to the
18 Commission approval?

19 **A.** Yes.

20 **Q.** You do?

21 **A.** Yes.

22 **Q.** So it's your understanding that parties

1 generally do continue to work together to fulfill
2 the obligations of the agreement despite a pending
3 Commission approval?

4 **A.** Yeah, when there is no dispute in open items,
5 generally they move forward from the date they both
6 sign.

7 **Q.** Now, are you -- actually, let me -- the next
8 step or there are several steps they take subsequent
9 to the signing of the agreement. And is it your
10 general experience that one of those is that the
11 CLEC provides its forecast for what type of
12 facilities and capacity it's going to need to the
13 ILEC?

14 **A.** Some ILECs. Not ILECs require that but ILECs
15 have come up with things called CLEC manuals or
16 operation manuals where for some CLECs or some RBOCs
17 that's a requirement. There are other places where
18 that's not required. So when you talk nationwide,
19 that's not always the case.

20 **Q.** Let me. It's your understanding that most
21 RBOCs have -- and actually for the record an RBOC is
22 a Regional Bell Operating Company. Is it your

1 understanding that most RBOCs have not only CLECs
2 interconnected with them but also interexchange
3 communications carriers, wireless carriers, paging
4 companies, a whole host and variety of carriers?

5 **A.** They do, but they are not all the same type of
6 interconnection. But they all, if you want to use
7 the generally phrase interconnected, yes, all sorts
8 of carriers.

9 **Q.** And they use the RBOCs' network, existing
10 network, in different ways?

11 **A.** Yes.

12 **Q.** Doesn't it seem reasonable to you that the RBOC
13 would need to know in what capacity each of those
14 entities is going to use its network so that it can
15 plan accordingly?

16 **A.** The answer to that is yes and typically, if
17 there is not a forecast, there is an engineering
18 level discussion where engineers talk. There is
19 usually some sort of communication.

20 **Q.** So at some point in time it is normal for the
21 ILEC to be informed of what this interconnecting
22 party is planning on doing and how much traffic is

1 going to be coming onto the ILEC's network?

2 **A.** That's right, correct.

3 **Q.** And it is also your understanding that
4 subsequent to the signing of the agreement, the
5 interconnecting party, in this case let's talk about
6 the CLEC, identifies a location where they want to
7 interconnect?

8 **A.** Yes.

9 **Q.** And it is your understanding that the identity
10 of the location generally does not come from the
11 ILEC?

12 **A.** Generally, that's true.

13 **Q.** And are there reasons why the CLEC would want
14 to be the entity that makes that decision?

15 **A.** Yes, it is their network. They can decide to
16 do things any technically feasible way.

17 **Q.** So as a general matter a CLEC would not want to
18 be told where they have to locate?

19 **A.** They might want advice. I mean, they might
20 honestly want a list of places that would work for
21 them. But no, no CLECs like to be told just who
22 they are. They are an independent sort of people.

1 **Q.** Sure, sure, that sounds reasonable to me. So
2 as you are moving forward, there is typically a
3 meeting that's going to be held between the CLEC and
4 the ILEC?

5 **A.** With maybe not a face-to-face meeting,
6 sometimes just a phone call, sometimes e-mails but
7 some sort of communications, yes.

8 **Q.** And do those types of meetings typically
9 involve the more technical type people, the
10 engineers, whoever needs to talk and figure out how
11 this interconnection is actually going to work?

12 **A.** Yeah, again that's not always done. But when
13 they have that meeting, it's usually referred to as
14 the engineering meeting, but again that doesn't
15 always happen. But when it does happen, it is
16 technical people, right.

17 **Q.** Okay. And is it also normal that the
18 representatives of both companies, the CLEC and the
19 ILEC, are going to visit the location that's decided
20 upon to make sure that the facilities are in
21 position for the interconnection?

22 **A.** Not together but you have to assume the CLEC

1 already visited in choosing the location, and I
2 would assume that Verizon goes out and checks it
3 out. But we have never been privy that they do, so
4 I don't know that they visit. I would assume that
5 they do but I really don't know that Verizon visits,
6 so.

7 **Q.** So is it your understanding that Verizon can
8 send a representative to the CLEC location without
9 having the CLEC present?

10 **A.** Yeah, these are generally buildings where they
11 already have existing customers. They already have
12 rights to the closets. Yeah, they don't need the
13 CLEC's right to look at the building. I have never
14 -- in all the times we have done this I have never
15 been informed that they were visiting our building,
16 so.

17 **Q.** And it would seem that there would be a concern
18 from the CLEC's perspective, you know, if those are
19 the facilities that are agreed upon where the
20 interconnection is going to take place, that nothing
21 happens to those facilities that would somehow
22 inhibit that, you know, the ability to actually

1 fulfill the interconnection. It would seem
2 reasonable that both parties would want to be there
3 at the same time.

4 **A.** Yes, but I have never been aware of a
5 simultaneous meeting. That sounds reasonable, but
6 it doesn't happen that way.

7 **Q.** Okay. And is it also your understanding that
8 once all these pre-steps are completed, the CLEC
9 will submit what is called an Access Service Request
10 or for abbreviation purposes an ASR?

11 **A.** Yes. Well, assuming that they want facilities
12 in a certain direction. In some cases Verizon
13 submits the ASR. It all depends on what type of
14 interconnection you have.

15 **Q.** You know what, I think that's a good point. An
16 ASR is required if the flow of the direction of the
17 traffic is going to be from the ILEC to the CLEC, is
18 that correct?

19 **A.** Yes, yes.

20 **Q.** Is it also your understanding that for to
21 actually effectuate that flow of traffic from the
22 ILEC to the CLEC, the CLEC must have number

1 prefixes?

2 **A.** No, actually because there are CLECs who only
3 deal with data and they don't have to get numbers.
4 People like Covad never got a number and they have a
5 hundred collocation points. So it is not mandatory
6 to have a number. It is mandatory to have numbers
7 if you want to interchange local traffic.

8 **Q.** Local traffic in terms of voice traffic?

9 **A.** Yes.

10 **Q.** And the ASR is essentially the official order
11 form for the trunks or the facilities that are going
12 to be used for the interconnection?

13 **A.** Yes, it is an industry standard form.

14 **Q.** And that industry standard form, was that
15 developed through an industry forum?

16 **A.** Yes.

17 **Q.** And were CLECs included in the forum?

18 **A.** Not actually because it was developed before
19 the Act. The ASRs have been around for many, many
20 years. So, yeah, they have been around at least 30
21 years.

22 **Q.** But it wasn't just the ILECs that developed

1 them; it would be other industry participants?

2 **A.** I would imagine IXC's were part of that. Some
3 other people probably were too, yeah.

4 **Q.** And for the traffic that's going to flow from
5 the ILEC to the CLEC, the CLEC is the responsible
6 party for actually submitting the ASR, correct?

7 **A.** Would you repeat that?

8 **Q.** For the portion of the traffic that will flow
9 from the ILEC to the CLEC, the CLEC is the
10 responsible party for submitting the ASR for that
11 personal traffic?

12 **A.** That is correct.

13 **Q.** Now, by virtue of this ASR, does the CLEC --
14 the CLEC doesn't actually acquire ownership of the
15 facilities that are being used to circuit the
16 traffic?

17 **A.** Well, they can. They can own facilities
18 entirely up to and including the Verizon tandem, if
19 they choose so. So they can own those facilities.

20 **Q.** We might be talking past each other a little
21 bit. Interconnection agreements are in existence
22 for a period of time; they have terms, correct?

1 **A.** Yes.

2 **Q.** And the interconnection that takes place
3 pursuant to the agreement also expires at the time
4 the agreement expires?

5 **A.** Not actually --

6 MR. DICKS: Objection calls for a legal
7 conclusion.

8 **A.** Yeah, it doesn't expire. Usually they continue
9 on until a new one is negotiated. They don't drop
10 dead. They stay in effect until a new agreement is
11 reached, usually. But they do have termination
12 dates.

13 JUDGE ALBERS: Have you still got an objection?

14 MR. DICKS: I just said my objection for the
15 record. Nobody waited for a ruling so I moved on.
16 I will withdraw the objection, I guess.

17 MS. NAUMER: I will just preface, Mr. Dicks, I
18 believe I stated this at the beginning of my
19 questioning that I am not asking Mr. Dawson this in
20 any sort of a legal capacity. I know he is not an
21 attorney, but he does have substantial experience in
22 working with CLECs and getting them interconnected.

1 And I am asking him about his professional
2 understanding of how this works.

3 MR. DICKS: I understand.

4 MS. NAUMER:

5 Q. The interconnection agreements will expire; the
6 parties don't have to re-enter into a new one; a
7 party could decide to terminate its business?

8 A. Yes, yes.

9 Q. So those termination dates can in fact be a
10 termination date for the agreement?

11 A. Yes.

12 Q. And if an agreement is actually terminated,
13 then that interconnection does not continue to
14 exist, is that correct?

15 A. You actually have --

16 MR. DICKS: Hang on a second. It's an
17 incomplete hypothetical and I think, despite the
18 best intentions, it calls in some regards for a
19 legal conclusion. He may not choose to answer.

20 JUDGE ALBERS: It is an incomplete
21 hypothetical?

22 MR. DICKS: Yes. The first part she gave an

1 incomplete hypothetical that only had a couple of
2 pieces to it, so.

3 JUDGE ALBERS: To the extent the witness feels
4 that he needs additional points to fulfill the
5 hypothetical, do so.

6 MS. NAUMER: I will withdraw the question.

7 **Q.** At the point in time that an agreement would no
8 longer be in effect for the two parties who are
9 previously involved in that interconnection, the
10 CLEC doesn't walk away with actual ownership of
11 those facilities. Those facilities are the ILEC's
12 and they remain with the ILEC, is that correct?

13 **A.** Well, again, not all cases are those the ILEC's
14 facilities. In some cases the CLEC does own those
15 to start with. Again, a CLEC can build fiber all
16 the way to the end.

17 **Q.** That's a good point. If the ILEC originally
18 owned those facilities, it's the ILEC that will walk
19 away with those facilities?

20 **A.** Yes.

21 **Q.** So in fact what is happening with that order is
22 the CLEC is leasing those facilities for a period of

1 time, correct?

2 MR. DICKS: That calls for a legal conclusion,
3 Your Honor.

4 JUDGE ALBERS: I think we can all agree that he
5 is not an attorney and he is not testifying as an
6 attorney.

7 MR. DICKS: It's just that the question,
8 whether he is an attorney or not, it calls for a
9 legal conclusion, least or not. She is
10 characterizing a legal circumstances.

11 JUDGE ALBERS: Would you like to define lease
12 for purposes of your question?

13 MS. NAUMER: I will. You know, Your Honor, I
14 think we are all sort of familiar with what a lease
15 requires. A lot of us lease apartment buildings; we
16 do things of that nature.

17 **Q.** A lease is something that gives you the right
18 to use those facilities for the period of the lease,
19 but once that lease is over, they revert back to the
20 owner, actual owner, of the facilities.

21 **A.** In this case it is not really a lease because
22 it all depends on how you negotiated the

1 interconnection agreement. In many cases neither
2 party actually pays for those facilities. So even
3 though a CLEC uses those facilities, they may not be
4 writing checks for use of those facilities during
5 the actual term of it. It all depends on how the
6 interconnection was negotiated. So without payment
7 it is hard to say it is a lease. They lose the
8 right to use it if the agreement ends, but it is
9 really not analogous to a lease because there may
10 not be cash going back and forth.

11 **Q.** You know, I think that we may be talking past
12 each other again and it is probably my fault because
13 lease is sort of a loose term. But the distinction
14 I believe I just heard you make is that you can
15 either pay for the use of those facilities at the
16 front end of the agreement, for the entire term of
17 the agreement, or you can make perhaps monthly
18 payments as you use those facilities throughout the
19 period of the agreement?

20 **A.** Or a third, you can agree not to pay each
21 other. There are many interconnections where there
22 simply is no payments made.

1 **Q.** And is that because there is also traffic --
2 there is traffic flowing in both directions?

3 **A.** Yes.

4 **Q.** And so both parties agree that, well, we will
5 use each other's facilities?

6 **A.** You don't charge me, I won't charge you.

7 **Q.** It is sort of a barter arrangement?

8 **A.** Yes.

9 **Q.** But at the end of the day, the actual owner of
10 the facilities prior to the interconnection is the
11 owner of the facilities at the end of the
12 interconnection?

13 **A.** Yes.

14 **Q.** Is there any inherent reason that facilities
15 located at a central office cannot be used for
16 interconnection?

17 **A.** What type of facilities?

18 **Q.** Is there something about central office in and
19 of itself that says none of the facilities located
20 there would ever be appropriate regardless of type?

21 **A.** If you want to interconnect at a central office
22 you are going to have to buy something called a

1 collocation and put your own equipment in. I don't
2 know of anyone that has been able to use the RBOC's
3 equipment in the central office. You are allowed to
4 physically be in the central office but that's with
5 your own equipment, and that happens very routinely.

6 **Q.** Now, you stated that for in-bound voice traffic
7 a prefix is required?

8 **A.** Yes.

9 **Q.** And Neustar is currently the company that is in
10 charge of assigning number prefixes, is that
11 correct?

12 **A.** Correct.

13 **Q.** And an ILEC cannot order prefixes on behalf of
14 a CLEC, can they?

15 **A.** Actually, they can. They normally don't. They
16 actually do have the right to do it and there are a
17 few cases where they have done that, back before
18 things got unfriendly in the industry.

19 **Q.** Now, Neustar -- my understanding, at a lot of
20 locations there are things like numbers going into
21 jeopardy, numbers going into exhaust, correct?

22 **A.** Correct.

1 **Q.** And Neustar -- strike that. Neustar posts, my
2 understanding is on its website, there could be
3 other locations, but it posts those areas, those
4 areas and its prefixes where exhaust or jeopardy
5 actually exists, does it not?

6 **A.** Yes.

7 **Q.** So anybody can access Neustar's website and
8 find that information, correct?

9 **A.** Yes.

10 **Q.** And is it your understanding that it is typical
11 for CLECs to obtain their prefixes from Neustar
12 ahead of the time that they actually place their
13 orders for interconnection trunks?

14 **A.** No, they try to do them simultaneously because
15 when you can do things at the same time, you just
16 gain efficiency in costs. The goal is to try to do
17 it all at the same time.

18 **Q.** Mr. Dawson --

19 **A.** It doesn't take very long to get numbers.
20 Currently it is a fairly rapid process. People just
21 send in the ASRs when they send in their number
22 requests and they should both come back fairly

1 quickly.

2 Q. Okay. And is it also your understanding that a
3 CLEC cannot provide service in a state until it has
4 a tariff on file for service in that state?

5 A. They can't provide normal service to end users.
6 They can provide wholesale service to carriers
7 without a tariff.

8 Q. Do they need a tariff filed with the Federal
9 Communications Commission for that?

10 A. No longer. Years ago there was but that's --
11 the FCC doesn't require tariffs any more.

12 Q. For purposes of local traffic they must have a
13 tariff on file with the state commission, correct?

14 A. No, if they are going to get end user
15 customers, people who are the ultimate user of the
16 service, they need a tariff. But if they are only
17 going to sell to other carriers who then provide
18 that service, they don't need a tariff, so.

19 Q. Mr. Dawson, are you aware that -- actually, let
20 me strike that. If I understood through reading
21 through your testimony, you have -- there are
22 essentially two reasons that you would find that

1 this alleged retail/wholesale distinction would be
2 problematic. And correct me if I am
3 mischaracterizing this, but my understanding is one
4 is that the costs of the facilities which you assert
5 would be passed onto end users and the second is
6 that the period of time that it takes to actually
7 build a dedicated facility is a period of time that
8 a CLEC would have to wait to receive
9 interconnection, is that correct?

10 **A.** And there is a third reason which is it meets
11 the requirement that the FCC and the Congress
12 established that you can meet at any technically
13 feasible point, and that is a technically feasible
14 point. So there is three reasons. I would agree
15 that's what my testimony essentially says.

16 **Q.** Okay. Could you identify the location in NCC's
17 and Verizon's, Verizon in Illinois, could you
18 identify the location in that interconnection
19 agreement where it states that the CLEC cannot
20 interconnect on existing facilities?

21 **A.** That's not in the interconnection agreement
22 generally. The interconnection agreement typically

1 is a high level document and then when you get down
2 to real ordering, then policies and those sort of
3 things kick in. So that's not in the
4 interconnection agreement, as far as I am aware of.

5 **Q.** Is it in the interconnection agreement that
6 there must be a fiber facility built for the
7 interconnection?

8 **A.** No, actually the interconnection agreement says
9 the three same things that Mr. Bartholomew has put
10 back in his e-mail.

11 MS. NAUMER: Your Honor, I would move to strike
12 this as non-responsive. I am asking a very specific
13 question, yes or no, whether it is contained within
14 the interconnection agreement and that's not what I
15 am getting back.

16 MR. DICKS: I disagree.

17 THE WITNESS: I was trying to be responsive.

18 MR. DICKS: Hang on. He wants to hear from
19 counsel before he gives a ruling. I disagree. I
20 think he is doing his best to attempt to answer the
21 question and he is being interrupted.

22 JUDGE ALBERS: I will sustain the objection.

1 MS. NAUMER:

2 Q. There is no location -- I will just restate it.
3 You cannot identify the location in the
4 interconnection agreements where it states that the
5 CLEC must interconnect on a fiber facility that is
6 built for that CLEC, yes or no, please?

7 A. No, it doesn't say that.

8 Q. You cannot identify anywhere within the
9 interconnection agreement where it states that the
10 CLEC cannot interconnect on facilities that are
11 shared with end user customers in Illinois?

12 A. No, it does not say that.

13 Q. There is nowhere within the interconnection
14 agreement where it states that the CLEC must
15 interconnect on facilities that are dedicated to the
16 CLEC itself, does it?

17 A. Not the interconnection agreement, no.

18 Q. Are you aware that NCC adopted Verizon's
19 pre-existing interconnection agreement with AT&T in
20 Illinois?

21 A. I knew they adopted one. I am not sure which
22 one it was but I will accept your word it was AT&T.

1 **Q.** Have you not read their interconnection
2 agreement in Illinois?

3 **A.** I read it but once you read it, they no longer
4 say who the original party was. They put his name
5 on it instead. So I just don't know that it was
6 originally AT&T's.

7 **Q.** Are you aware that the AT&T agreement in
8 Illinois was an arbitrated agreement?

9 **A.** Yes, that I am aware of.

10 **Q.** Are you also aware that it is the most popular
11 agreement for CLECs to opt into with Verizon in
12 Illinois?

13 MR. DICKS: I am going to object. That calls
14 for hearsay and conclusion testimony.

15 MS. NAUMER: He is an expert witness. He can
16 certainly testify to his opinions and his own
17 conclusions. And I am sorry, what was your first?

18 MR. DICKS: And --

19 MS. NAUMER: Oh, speculation.

20 MR. DICKS: Wait. The question calls for --
21 assumes a fact that has not been proven. You have
22 not asked him --

1 MS. NAUMER: I am asking him if he knows.

2 JUDGE ALBERS: I am going to overrule the
3 objection right here.

4 JUDGE SHOWTIS: So is your question by most
5 popular for opt-ins if that's the agreement that
6 more CLECs have chosen to opt in, in Illinois, more
7 than any other agreement?

8 MS. NAUMER: Yes, that's a correct
9 characterization.

10 JUDGE SHOWTIS: Okay. If he knows.

11 THE WITNESS: A. The answer is I don't
12 normally keep a tally sheet so I don't know how to
13 answer that. I don't have anything.

14 MS. NAUMER:

15 **Q.** But you are aware that -- strike the question.
16 Mr. Dawson, you did not participate or NCC was not a
17 client of yours with respect to either entering into
18 an interconnection agreement with Verizon in
19 Illinois or actually implementing that
20 interconnection, were they?

21 **A.** That's correct.

22 **Q.** So your knowledge of what activities occurred

1 in Illinois with respect to NCC's interconnection
2 here in Illinois are based on what Mr. Lesser has
3 told you and perhaps some of the items that are
4 filed in this case, is that correct?

5 **A.** Correct.

6 **Q.** You don't have any first-hand knowledge of the
7 events here, do you?

8 **A.** No.

9 **Q.** It is my understanding, however, that you --
10 let me strike that. Was NCC a client of yours --
11 strike that. You have testified on NCC's behalf in
12 their complaint against Verizon's affiliate in West
13 Virginia, correct?

14 **A.** Yes.

15 **Q.** And is it also my understanding that you have
16 testified on behalf of a company called Core
17 Communications on behalf of their complaint against
18 Verizon's affiliate in Maryland, is that correct?

19 **A.** Yes.

20 **Q.** With respect to Illinois -- strike that. You
21 are basing some of your opinions in this proceeding
22 on the testimony and other things that have been

1 filed in the cases in West Virginia and Maryland, is
2 that correct?

3 **A.** Certainly, yes, some of my opinions, yes.

4 **Q.** And you did not -- you in fact have no specific
5 knowledge of Verizon's network in Illinois, do you?

6 **A.** No.

7 **Q.** You do not have any specific knowledge of the
8 configuration and location of fiber routes in
9 Verizon's network in Illinois, do you?

10 **A.** No.

11 **Q.** And you have no specific knowledge of how
12 Verizon's network in Illinois developed?

13 **A.** No.

14 **Q.** Your opinion -- Mr. Dawson, in response to my
15 previous three questions, you answered no. Did the
16 no mean that, no, you had no specific knowledge or
17 that, no, my question was incorrect?

18 **A.** No, I had no specific knowledge.

19 **Q.** Thank you for the clarification. Your opinion
20 that pre-1996 that Verizon's network in Illinois was
21 divided into facilities that served wholesale
22 customers and facilities that served retail

1 customers is based on testimony that you heard with
2 respect to how Verizon's affiliates in West Virginia
3 and New York, how their networks developed pre-1996,
4 is that correct?

5 **A.** No, it is also based upon I over the years
6 worked with GTE a lot. I have had a lot of clients
7 connect with GTE before they merged with Verizon.

8 **Q.** Okay. Any of the clients that you had, they
9 represented -- prior to the merger, did any of those
10 clients interconnect in Illinois?

11 **A.** No. Well, maybe. I have one client here. I
12 am not sure of the timing. He may have started as
13 GTE. I am not entirely sure that I am correct. I
14 think that was Verizon when we did it, yeah.

15 **Q.** You did not perform any study, analysis,
16 investigation specific to Verizon's fiber route in
17 Illinois to determine where they are, did you?

18 **A.** No, nor could I because Verizon would never
19 share that with an outsider anyway.

20 **Q.** You didn't ask -- it wasn't asked to be
21 provided during discovery in this proceeding, was
22 it?

1 **A.** No, it was not because I have asked it in other
2 states and it has never been produced. So we didn't
3 bother.

4 MR. ROONEY: I am sorry, I didn't hear that.

5 THE WITNESS: We have asked for it in other
6 states and it has never been produced. We just
7 didn't bother.

8 MR. ROONEY: Thank you.

9 MS. NAUMER:

10 **Q.** My understanding is that you have had two CLEC
11 clients who you have assisted with entering into
12 interconnection agreements in Illinois, is that
13 correct?

14 **A.** Correct.

15 **Q.** And one of those is not NCC, correct?

16 **A.** Correct.

17 **Q.** And I am a little bit confused with one of your
18 prior answers because my understanding is that, of
19 the other CLECs that you have assisted with their
20 interconnections in any of the Verizon footprints,
21 that the remaining states where you have been
22 involved have been former Bell Atlantic states

1 versus former GTE states, is that correct?

2 **A.** Could you repeat the question?

3 **Q.** It might be a bit confusing. I will withdraw
4 the question and ask a different one.

5 Apart from the two CLECs that you assisted
6 in entering into interconnection agreements in
7 Illinois, all of your other personal experience with
8 respect to assisting CLECs obtain interconnection
9 with an entity that is within the Verizon footprint,
10 all of that remaining personal experience has been
11 in states that fall within the former Bell Atlantic
12 operating territories?

13 **A.** No, that's not correct.

14 **Q.** It is not?

15 **A.** No.

16 MS. NAUMER: Your Honor, may I approach the
17 witness?

18 **Q.** Mr. Dawson, I am showing you -- would you agree
19 with me that the title of this document states it as
20 "North County Communications Corporation
21 Supplemental Response to Verizon North, Inc., and
22 Verizon South, Inc., Fourth Data Request Directed to

1 Doug Dawson?"

2 **A.** Yes.

3 **Q.** Would you also -- forgive me if this starts to
4 slip a bit. Would you also agree with me that there
5 is an affidavit attached to this document that is
6 signed by you?

7 **A.** Yes.

8 **Q.** And would you agree that you provided these
9 answers yourself or they were provided under your
10 direction and control?

11 **A.** Yes.

12 **Q.** And you were sworn to tell the truth, is that
13 correct?

14 **A.** Yes.

15 **Q.** And directing your attention to the first
16 discovery response which is marked VZ.NCC 4.01,
17 would you agree with me that that states, "Please
18 identify each and every state where you participated
19 or were involved in any manner in negotiating or
20 implementing an interconnection or potential
21 interconnection between either Verizon Illinois or
22 an affiliate of Verizon Illinois and any other

1 telecommunications carrier." And your response
2 which was a supplemental response reads, "I have
3 participated or was involved in negotiating or
4 implementing an interconnection agreement with
5 Verizon Illinois or an affiliate of Verizon Illinois
6 in the following states." And the states you list
7 are Illinois, Maryland, Pennsylvania, Virginia, West
8 Virginia, Maine, New Hampshire, Vermont,
9 Massachusetts and New Jersey, is that correct?

10 **A.** Correct.

11 **Q.** Illinois is the only one of those states that
12 falls within the former GTE footprint?

13 **A.** Also Virginia. Virginia had GTE properties.

14 **Q.** Okay, just one moment. Now, Mr. Dawson, you
15 stated that you assisted two other CLECs in entering
16 into their agreements with Verizon in Illinois. Of
17 those two CLECs, is it your opinion that Verizon
18 Illinois -- or with respect to those two
19 interconnections, is it your opinion that Verizon
20 Illinois took any actions in bad faith?

21 **A.** No, but those CLECs were different. They were
22 not facility-based, so.

1 MS. NAUMER: Your Honor, I would request that
2 everything after no be stricken as non-responsive.

3 JUDGE ALBERS: Sustained but I am sure counsel
4 will have some redirect for you on that.

5 MS. NAUMER:

6 Q. Is it your understanding -- it is also your
7 belief that Verizon Illinois didn't do anything in
8 violation of any legal rule during those two
9 interconnections, isn't that correct?

10 A. That's correct.

11 Q. Essentially, it would be a reasonable
12 characterization of your experience, of your actual
13 experience with Verizon Illinois to say that that
14 experience -- strike the question. It would be a
15 reasonable characterization of your actual
16 experience with assisting CLECs and implementing
17 interconnections with Verizon in Illinois that that
18 experience is quite limited, is that correct?

19 A. Yes.

20 Q. Did you survey -- actually, let's strike that.
21 Did you perform any survey of CLECs in Illinois with
22 respect to their interconnection experiences in

1 preparing for this proceeding?

2 **A.** No.

3 **Q.** Did you ask any other CLECs if they had been
4 told that there was a policy against interconnecting
5 at an existing facility that's used to serve retail
6 customers during their interconnections with Verizon
7 in Illinois?

8 **A.** I didn't directly. Instead, I suggested it to
9 Mr. Lesser that he ask that. He did talk to CLECs,
10 so I did not directly talk to CLECs.

11 **Q.** You did not conduct any factual investigation
12 into whether Verizon had a policy of refusing to
13 interconnect at an existing facility used to serve
14 retail customers in Illinois apart from what
15 Mr. Lesser told you and the documents that have been
16 filed in this proceeding, is that correct?

17 **A.** That's correct.

18 **Q.** The two CLECs on whose behalf you worked in
19 entering into interconnection agreements with
20 Verizon Illinois, neither of those CLECs filed
21 complaints with the Commission with regard to those
22 interconnections, did they?

1 **A.** Not that I am aware of.

2 **Q.** Are you aware of any CLEC that has filed a
3 complaint against Verizon in Illinois with regard to
4 interconnection practices, other than NCC in this
5 case, since the enactment of the Telecommunications
6 Act of 1996?

7 **A.** I said I don't follow people other than my
8 clients. No, I am not aware of any.

9 **Q.** Mr. Dawson, you are a founder and owner of CCG
10 Consulting, correct?

11 **A.** Yes.

12 **Q.** CCG was founded in 1997?

13 **A.** Yes.

14 **Q.** And CCG's primary line of business is providing
15 consulting services to telecommunications carriers,
16 correct?

17 **A.** Yes.

18 **Q.** And CCG's clients are primarily CLECs, is that
19 correct?

20 **A.** They were three or four years ago. Now they
21 are probably 40 percent of my clients. CLECs kind
22 of went away.

1 **Q.** Okay. You have never provided consulting
2 services -- strike that. CCG has never provided
3 consulting services with respect to interconnection
4 practices for regional Bell operating companies,
5 have they?

6 **A.** Meaning the regional Bell operating companies
7 were my client?

8 **Q.** Yes.

9 **A.** No.

10 **Q.** Have you ever provided -- has CCG ever provided
11 any consulting services for any of the RBOCs?

12 **A.** No.

13 **Q.** Has CCG ever provided consulting services
14 for -- actually, strike that. A clarification on
15 your last answer, you stated that you haven't for
16 RBOCs. Would that include the former GTE operating
17 companies?

18 **A.** Yes, that would include them.

19 **Q.** And you are in charge of a CLEC implementation
20 team for CCG?

21 **A.** Yes.

22 **Q.** And that team assists CLECs in negotiating and

1 implementing their interconnections, is that
2 correct?

3 **A.** Yes.

4 **Q.** And CCG does not perform similar services for
5 RBOCs?

6 **A.** No.

7 **Q.** You provided testimony in NCC's complaint
8 against Verizon's affiliate in West Virginia that
9 Verizon's West Virginia affiliate had this alleged
10 policy to distinguish between retail and wholesale
11 facilities, is that correct?

12 **A.** Yes.

13 **Q.** And isn't it true that the West Virginia
14 Commission rejected your opinion on that?

15 **MR. DICKS:** Objection, irrelevant, lacks
16 foundation, calls for speculation.

17 **MS. NAUMER:** Well, okay. To address these each
18 in turn, number one, it is not irrelevant that the
19 West Virginia Commission rejected this exact premise
20 that the witness is offering here in Illinois.

21 Number 2, as to foundation, the Illinois
22 Commission's rules of practice provide, which is

1 different with respect to testimony and things filed
2 by staff in other state proceedings, the
3 Commission's rules do permit administrative notice
4 of other state commission's actual orders.

5 And in terms of foundation I would request
6 that the foundation would be administrative notice
7 in this instance of what the West Virginia
8 Commission found.

9 MR. DICKS: That opinion is on appeal as in the
10 Core. So if we let one in, we ought to let them
11 both in. They have a motion to strike, I believe,
12 on the Core decision based on the fact that it is on
13 appeal. So if we can stipulate we can have them
14 both in, let's have them both in and this Commission
15 can deal with it as it sees fit according to the
16 weight it gives it.

17 JUDGE ALBERS: The Core was found?

18 MS. NAUMER: Yeah.

19 MR. DICKS: Yes.

20 MS. NAUMER: Just one moment.

21 (Pause.)

22 MS. NAUMER: Your Honor, we don't have a

1 problem with administrative notice of the
2 commission's decisions in those two states, but once
3 again that's limited to the decisions. All of the
4 filings and the testimony and the allegations that
5 were submitted during the course of those
6 proceedings, it is not appropriate for
7 administrative notice of those materials.

8 JUDGE ALBERS: Say the last part again, I am
9 sorry.

10 MS. NAUMER: It is not appropriate for all of
11 the other materials, the testimony, the exhibits,
12 whatever has been submitted into the records in
13 those other proceedings, those types of materials
14 are not appropriate for administrative notice. But
15 we don't have an objection to administrative notice
16 of either the West Virginia Commission's order or
17 the Maryland Commission's order, the actual orders
18 themselves.

19 JUDGE ALBERS: I would agree with that.
20 However, I would ask someone to provide us with
21 copies of those two orders with the understanding
22 that they are at least --

1 MR. DICKS: They are both on appeal.

2 JUDGE ALBERS: They are both on appeal, okay.

3 MR. DICKS: And the reason why I think
4 Ms. Naumer's premise is misplaced is basically
5 because of those appeals. If this Commission is
6 going to consider both of those decisions, despite
7 the fact that they are on appeal, then the
8 Commission ought to know the premise on which those
9 decisions were made. So I don't see how --

10 JUDGE ALBERS: The premise?

11 MR. DICKS: The premise of the decision. In
12 other words, the basis of the opinion upon which
13 each commission made its ruling is important. If it
14 is not a final ruling being submitted for purposes
15 of res judicata or collateral estoppel, then the
16 opinions by themselves are only going to tell what
17 the final conclusion is without any way for this
18 Commission to distinguish why each commission came
19 to a different conclusion about that policy. If you
20 are only going to take the decisions and it is not
21 for collateral estoppel or res judicata because they
22 are on appeal, you can't use them for that reason,

1 then it has to be that we are accepting those to
2 consider what their weight might be. How can we do
3 that without knowing the basis upon which each
4 commission made its ruling. That is the essence.

5 MS. NAUMER: Your Honor, I think there is a
6 primary -- and perhaps this got messed up in talking
7 about administrative notice of these two orders --
8 but I think there is a primary inconsistency with
9 what Mr. Dicks believes these orders would be
10 permitted into evidence to show and what I believe
11 they should be permitted to show. In this instance
12 I am trying to demonstrate that Mr. Dawson's
13 testimony and his opinions in that case were
14 rejected by the Commission which is an entirely
15 different thing than allowing that order to somehow
16 be relied on for merits in Illinois, and it should
17 not be relied on for merits. The merits in this
18 case must come from the evidence in this case.

19 JUDGE ALBERS: I don't disagree with that.

20 MS. NAUMER: Sorry to get a little carried
21 away.

22 MR. DICKS: The reasons why the commission in

1 West Virginia did or didn't do what Mr. Dawson's
2 opinions are based upon are evidence that was
3 received in that case. For this Commission to rule
4 or to find --

5 JUDGE ALBERS: Are you telling me the decisions
6 in Maryland and West Virginia, the actual documents
7 themselves, do not contain sufficient documentation,
8 sufficient reasoning, within them to support the
9 decision?

10 MR. DICKS: That is not what I am saying. I am
11 saying it does not recite and does not give specific
12 example or cite to all of the evidence upon which
13 they relied in coming to all of their conclusions.
14 Clearly they can't. Otherwise, you would have the
15 whole thing.

16 JUDGE ALBERS: All right. We will take
17 administrative notice of the decisions from the
18 commissions in Maryland and West Virginia on those
19 two cases. We will not at this point in time be
20 admitting testimony, briefs and what not that were
21 also offered in those cases. However, as indicated
22 in the ruling to Verizon's motion to strike, if one

1 wants to use a piece of testimony from the same
2 witness in both one of those cases and this one in
3 order to try to impeach that witness, that's a
4 different question. But for now someone needs to
5 provide me in the near future and Judge Showtis a
6 copy of the two decisions, and because they are both
7 on appeal, that will certainly impact the weight
8 they are given.

9 MR. ROONEY: I guess, Your Honor, my only
10 comment to that is at this juncture they are the
11 decision of the commission, just like a decision
12 here in Illinois, and those decisions stand and they
13 are effective regardless of the appeal. I don't
14 know necessarily if the appeal should --

15 JUDGE ALBERS: At this point I am not even sure
16 what the decisions themselves provide and I am not
17 even sure what's being appealed in that, so I am not
18 prepared to make much more of a statement than that
19 on them.

20 MR. ROONEY: Fair enough. I appreciate that.

21 JUDGE ALBERS: Who should I look forward to
22 receiving those from?

1 MS. NAUMER: We can send them our records down.

2 MR. DICKS: I am sorry, both of them?

3 MR. ROONEY: Sure, we would be happy to get
4 both of them.

5 MR. DICKS: Thank you. I appreciate that.

6 MS. NAUMER:

7 **Q.** During the course of your employment with CCG,
8 how many times have you provided testimony in a
9 professional capacity?

10 **A.** I would guess a dozen. That's not an exact
11 count but maybe a dozen.

12 **Q.** And how many times have you provided testimony
13 on behalf of an ILEC against a CLEC?

14 **A.** Never.

15 **Q.** You are really a professional witness, aren't
16 you?

17 MR. DICKS: Objection, argumentative.

18 MS. NAUMER: I will withdraw.

19 **Q.** You get paid for your testimony?

20 MR. DICKS: Objection, argumentative.

21 MS. NAUMER: It goes to his bias, Your Honor.

22 JUDGE ALBERS: I will overrule the objection.

1 THE WITNESS: So I can answer?

2 JUDGE ALBERS: Yes.

3 THE WITNESS: A. Yes, I get paid for my
4 testimony.

5 MS. NAUMER:

6 Q. Are you paid on an hourly basis or a
7 contingency basis?

8 A. Hourly.

9 Q. Is that true with respect to interceding in
10 this proceeding as well?

11 A. In every case I have ever done. I never get
12 paid on a contingency.

13 MS. NAUMER: I have nothing further, Your
14 Honor.

15 JUDGE ALBERS: Just one, maybe two questions.

16 EXAMINATION

17 BY JUDGE ALBERS:

18 Q. You have worked with CLECs who are
19 interconnecting with companies other than Verizon
20 and GTE or Bell Atlantic, correct?

21 A. Yes.

22 Q. In the context of any of those other ILECs,

1 have you come across any distinction between the
2 wholesale/retail facilities as far as which type of
3 facilities an ILEC is interconnecting with?

4 **A.** This issue has never come up with any other
5 RBOC that I know of. Not only with my clients but I
6 don't believe it has been raised as an issue
7 anywhere else.

8 **Q.** I will note that whether this policy even
9 exists is in contention.

10 Have you worked with this alleged policy,
11 so to speak, in the context of your dealings with
12 any other CLECs and Verizon?

13 **A.** Just Core Communications, the one in Maryland
14 that they were referring to.

15 JUDGE ALBERS: Okay, thank you. Would you like
16 some time for redirect?

17 MR. DICKS: Please, briefly.

18 REDIRECT EXAMINATION

19 BY MR. DICKS:

20 **Q.** I want to follow up on that line of
21 questioning. Have you ever in dealing with any
22 other ILEC ever experienced in any other ILEC except

1 for Verizon insisting that a CLEC only interconnect
2 at a dedicated facility, regardless of some
3 wholesale/retail distinction?

4 **A.** No.

5 **Q.** Now, counsel pointed out that your assisting
6 CLECs in Illinois has been a somewhat limited
7 experience. Let me just ask you, which entity in
8 your experience controls the interconnection process
9 in whatever state you want to interconnect with
10 regarding the Verizon affiliate?

11 **A.** It's the same group of people at Verizon
12 corporate regardless of what state you deal with.

13 **Q.** What group of people?

14 **A.** I am not sure of their exact names. It's the
15 Verizon Services Corporation, I believe, so.

16 **Q.** All right. Can you in your experience when you
17 are trying to interconnect in any state, Illinois,
18 West Virginia, New York, Maryland, any other state
19 where Verizon has ILEC status, can you just deal
20 directly with the ILEC?

21 **A.** Not since about 1997. Right after the Act you
22 were allowed to talk to people in states. Since

1 then I don't believe we have ever talked to anyone
2 directly in a state.

3 **Q.** In your experience does Verizon insist that you
4 go through the Verizon Services Corporation to
5 interconnect?

6 **A.** Yes.

7 **Q.** Have you reviewed the material that has been
8 submitted as evidence and as proffered testimony in
9 this case?

10 **A.** Yes.

11 **Q.** Have you gone through the list of individuals
12 who are involved in this discussion about the policy
13 retail/wholesale, dedicated, shared facility?

14 **A.** Yes.

15 **Q.** Did you identify anybody on that list that was
16 located in Illinois or working for the Illinois
17 ILEC?

18 **A.** No.

19 **Q.** Have you been able to identify anybody on the
20 witness list who works for the Illinois ILEC?

21 **A.** No.

22 **Q.** Did you see in any of the materials that were

1 supplied by any party in this case where Mr. Lesser
2 was referred or encouraged to talk to the particular
3 ILEC about this policy?

4 MS. NAUMER: Your Honor, I have got to object.
5 I have been listening to him going down this line of
6 questioning and I am really struggling to figure out
7 how this relates at all to my cross examination.
8 This appears to be entirely outside of the scope.
9 It is clearly direct examination on his part.

10 MR. DICKS: She is addressing his limited
11 experience with dealing with Illinois ILECs. Our
12 whole premise in this case is you don't deal with
13 the Illinois ILEC. You deal nationwide with the
14 same group of people. And in this particular case
15 there was nobody from the Illinois ILEC ever brought
16 into the picture to discuss this with Mr. Lesser or
17 anybody else.

18 MS. NAUMER: I think that is a complete
19 mischaracterization. There are -- yes, there are
20 different corporate entities inside the whole
21 Verizon organization, but there were specific people
22 that are responsible for Illinois such as

1 Mr. Bartholomew and responsible for former GTE areas
2 such as Ms. Allison. So I think that he is
3 completely mischaracterizing the facts.

4 JUDGE ALBERS: These people work for Verizon
5 Corporate Services?

6 MS. NAUMER: Yes, but they are responsible for
7 working with the underlying ILECs in different
8 states. So, for instance, Mr. Bartholomew, one of
9 his states is Illinois so he works with the Illinois
10 engineers. He works with those people. So I think
11 that's a complete mischaracterization of the facts.

12 JUDGE ALBERS: I understand your position
13 although I am going to overrule your objection.

14 MR. DICKS:

15 Q. Do you have my question in mind or shall I have
16 my question read back?

17 A. I don't remember your question.

18 Q. You have reviewed the testimony and the
19 exhibits in this case, correct?

20 A. Yes.

21 Q. Have you seen a single reference to anybody
22 inquiring of any employee of Verizon North/South,

1 who everybody has been referring to as Verizon
2 Illinois, the ILEC in Illinois, regarding the
3 existence and non-existence of a policy?

4 **A.** No.

5 **Q.** Or regarding the existence or non-existence of
6 distinguishing between retail and wholesale
7 facilities?

8 **A.** No.

9 **Q.** Or entrance facilities or shared facilities?

10 **A.** No.

11 **Q.** You were asked about how many -- if you knew
12 any ILECs who had filed formal complaints regarding
13 some delay, do you remember that, regarding
14 Illinois?

15 **A.** Yes.

16 **Q.** And you said you had no idea, right?

17 **A.** Right.

18 **Q.** Do you have any idea how many CLECs were
19 notified about this policy by e-mail and just
20 decided not to come into this state?

21 MS. NAUMER: Objection, calls for hearsay.

22 MR. DICKS: She asked the exact line of

1 questioning, if he had ever heard of anybody filing
2 a formal complaint. And I want to know if he heard
3 anybody who just didn't complain but heard the
4 policy and walked away. I mean, that's what she
5 asked about, if anybody -- I mean, if there is a
6 lack of knowledge of this witness hearing about any
7 formal complaints, he is entitled to say whether or
8 not he has heard about anybody who has simply threw
9 their hands up and walked away...

10 MS. NAUMER: First of all --

11 MR. DICKS: ..when they heard the policy. I
12 have never interrupted you in this proceeding,
13 Ms. Naumer, and I would appreciate it if you
14 wouldn't interrupt me. I am just addressing the
15 Judge, and when I am done, I am sure you will have
16 an opportunity to speak.

17 This witness was asked specifically about
18 whether or not he had heard about any CLECs
19 complaining, and I want to know if he heard about
20 any CLECs who heard the policy and threw up their
21 hands and walked away and decided not to come to
22 Illinois. I have a feeling the answer is going to

1 be no, there is no one, and that's my point. He
2 wouldn't know whether somebody complained or heard
3 or decided that it was not worth their time to fight
4 about.

5 JUDGE ALBERS: All right, Ms. Naumer.

6 MS. NAUMER: Your Honor, I am sorry. I am
7 chomping at the bit because I did ask him that
8 question. I asked him if he had asked any CLECs if
9 they were told this policy during the
10 interconnection process and he said no, he wasn't
11 aware of any. I asked him if any of them filed
12 complaints. He said no, he wasn't aware of any. So
13 I asked this very question that Mr. Dicks says he is
14 now trying to get to the bottom of it. It's been
15 asked and answered.

16 JUDGE ALBERS: The distinction is subtle you
17 are making there, Mr. Dicks, but I will go ahead and
18 allow the question.

19 MR. DICKS:

20 **Q.** I simply want to know if you have any idea if
21 any CLECs have ever come up against this same policy
22 and decided they didn't have the time, energy or

1 inclination to fight it in Illinois?

2 **A.** No.

3 JUDGE ALBERS: Now, did you -- strike that.

4 MR. DICKS:

5 **Q.** You didn't go around and try to do a poll of
6 all the CLECs that tried to interconnect, have you?

7 **A.** No, I haven't.

8 **Q.** Now, you were asked about your involvement in
9 the Core case in Maryland. Did you read all of the
10 testimony in the Core case?

11 **A.** Yes.

12 **Q.** Did you sit through any live testimony or was
13 it all just written testimony?

14 **A.** I sat through the live testimony.

15 **Q.** And you heard Verizon's experts testify in that
16 case?

17 **A.** Yes, I have.

18 **Q.** And were these Verizon's Maryland employees or
19 were these the same employees of the same
20 corporation you were talking about early of Verizon
21 Services Corporation?

22 **A.** Verizon Services Corporation.

1 **Q.** Did anybody from the local ILEC there testify?

2 **A.** No.

3 **Q.** Did you hear Mr. -- was it a Mr. Visser (sp)?

4 Do you know who Mr. Visser is?

5 **A.** Yes.

6 **Q.** Who is he?

7 **A.** He is with Verizon Services Corporation.

8 **Q.** Did you hear him defend this policy in

9 Maryland?

10 **A.** Yes.

11 **Q.** How about Mr. Albert (sp)? Did you hear him do

12 the same thing?

13 **A.** Yes.

14 **Q.** Who is Mr. Albert?

15 **A.** He is with Verizon Services Corporation also.

16 **Q.** Did you read Mr. Hartmann's letter in this

17 case?

18 **A.** Yes.

19 **Q.** All right. And my letter to him?

20 **A.** Yes.

21 **Q.** Did you see him defend the policy?

22 **A.** Yes.

1 MS. NAUMER: Your Honor, I am going to have to
2 object on a couple -- well, number one, I believe
3 this is once again getting outside the scope of my
4 cross examination. And, you know, number two, in
5 particular, I wanted to know -- my questioning was
6 along the lines of, you know, what specifically did
7 he do in Illinois to investigate Illinois specific.
8 And now we are off on a tangent about everything
9 that has happened everywhere else and everything
10 that we have reviewed with regard to everybody else,
11 and that's outside the scope of my cross. It is
12 also beyond the scope of this case and the materials
13 that the Commission can consider in this case. And
14 that makes me pretty nervous because what I see
15 about to happen is all of the evidence from every
16 other state proceeding drawn through here and I
17 don't think that's appropriate, and I just want to
18 raise it as an issue matter.

19 MR. DICKS: I only ask it as a basis for his
20 opinion, and I am not going to be reading into the
21 record all of his testimony.

22 JUDGE ALBERS: Can you tie this to the cross?

1 MR. DICKS: Except for the last question that I
2 don't think he answered, I am done.

3 JUDGE ALBERS: With regard to the cross,
4 though?

5 MR. DICKS: Yeah. She asked for the basis for
6 his testimony and belief and he said the Core, the
7 Core case. And his experience in the Core case was
8 listening to their experts. She didn't finish the
9 line of questioning. She certainly opened the line
10 and didn't want to finish it. Now I am finishing
11 it. I am asking about the basis for his opinion.

12 JUDGE ALBERS: Okay. I am going to overrule
13 the objection.

14 MR. DICKS:

15 **Q.** You did read the Hartmann letter and mine which
16 precipitated that?

17 **A.** Yes.

18 **Q.** And you saw him defend the policy?

19 MS. NAUMER: Again, objection to the
20 characterization to it as a policy. I think that's
21 a mischaracterization. Once again, the West
22 Virginia Commission found that no policy existed.

1 So did Maryland -- I am sorry, West Virginia we are
2 referring to. I am sorry.

3 MR. DICKS: I am not sure if I understand the
4 objection.

5 MS. NAUMER: I am objecting to your question
6 that assumed the existence of a policy when the West
7 Virginia Commission specifically found the policy
8 did not exist. It's an improper question.

9 MR. DICKS: You want to make a ruling? It is
10 not binding on this person's opinion.

11 JUDGE ALBERS: I think you are asking about the
12 context of a letter essentially. I think we will
13 just let the letter speak for itself. It is Exhibit
14 S. I think we can just leave it there.

15 MR. DICKS: Okay. I will move on.

16 **Q.** In response to a question by Ms. Naumer about
17 the other CLECs that you assisted in Illinois, you
18 have made some sort of distinguishing factor based
19 upon these CLECs not being facilities-based and that
20 testimony was stricken as beyond the scope of the
21 question. So now I want to ask you follow-up
22 questions to Ms. Naumer's. Were the CLECs that you

1 were dealing with in Illinois non-facilities-based?

2 **A.** Well, technically they are facilities-based but
3 they are UNE-P carriers, meaning they don't have
4 their own trunks. We didn't have to go through
5 finding a location and doing all that network stuff.

6 **Q.** And is that significantly different than what
7 North County Communications was going through in
8 terms of their interconnection?

9 **A.** Yes. A UNE-P carrier effectively can go into
10 business 30 days after they sign the interconnection
11 agreement because there are no facilities to put
12 into place. That's just a different type of CLEC.
13 They would never have the same issues.

14 MR. DICKS: That's all I have.

15 JUDGE ALBERS: Recross?

16 MS. NAUMER: No, nothing further.

17 JUDGE ALBERS: Thank you, Mr. Dawson.

18 (Witness excused.)

19 I think at this point, I think Judge
20 Showtis may have discussed all this when you first
21 began, but the first thing tomorrow morning at 9:00
22 o'clock we will take up the Verizon response to the

1 objections that the County had to certain parts of
2 Verizon's testimony, and Judge Showtis and I will
3 take care of those before we hear any cross or
4 before you can offer into admission testimony of
5 Verizon witnesses.

6 MR. DICKS: I have some interrogatory or data
7 request responses, if you want to just use that time
8 to have these submitted to save some time, if you
9 don't have anything else for today, if we are not
10 going to put on any more witnesses.

11 JUDGE ALBERS: Hold on a second. Are these in
12 the nature of a cross exhibit that you raised with a
13 Verizon witness?

14 MR. DICKS: Well, some of them may but some of
15 them, even if I wasn't going to cross-examine any of
16 their witnesses, everyone of these I would want into
17 evidence in the record, either read in or submitted
18 in as admissions. But in my case in chief I would
19 want these in even before I cross-examining any of
20 their witnesses.

21 Fortunately for me, in Illinois apparently
22 counsel put everything on -- each single

1 interrogatory response and question on a single
2 piece of paper so it is a little bit easier. I now
3 know better and if we cross paths again, I will know
4 what to do. So I don't know if you want me to
5 submit them or confer with counsel off the record
6 first and do it first thing in the morning, whatever
7 your pleasure is.

8 MR. ROONEY: Assuming that these are ones that
9 we didn't include in the objection to the answer, if
10 there are objections, then I think we may want to
11 talk about it.

12 MR. DICKS: It is safe for ours. I don't think
13 objections are appropriate, I mean regardless of who
14 made the objections. It is just the answers.

15 MR. ROONEY: We may have provided answers
16 subject to the objection provided in the response.
17 I am not saying objections now but if you provided
18 objections in the written response received, we may
19 want to look at that.

20 MR. DICKS: The first one is not, but we should
21 go over them, I guess.

22 MR. ROONEY: That's probably a safe approach.

1 JUDGE ALBERS: We will do that then. And
2 before I forget, as far as testimony, I think we
3 have everything we need from Mr. Dawson as far as
4 those two pieces of testimony. There is no
5 revisions or anything forthcoming?

6 MR. DICKS: No.

7 JUDGE ALBERS: And NCC Exhibit 4, the rebuttal
8 testimony, there wasn't anything stricken in that
9 pursuant to Verizon's motion to strike so that
10 version that appears on e-Docket should be the one
11 that you are still offering for admission?

12 MR. DICKS: That's correct.

13 JUDGE ALBERS: Earlier I believe Verizon
14 indicated they had no objections to either of the
15 exhibits post the motion to strike one. So NCC
16 Exhibit Number 4 which is on e-Docket is admitted
17 and NCC Exhibit 3 which you have a hard copy of
18 which you brought today, correct, that also is
19 admitted since that is not the same as on e-Docket.

20 (Whereupon NCC Exhibits
21 3 and 4 were admitted
22 into evidence.)

1 MR. DICKS: That's his original testimony.

2 Mr. Dawson's -- no, there were no changes to his
3 rebuttal testimony but the new, in his original
4 direct testimony there were changes to and that was
5 sent in in hard copy and I believe it was a correct
6 one. I don't think there were any mistakes on
7 those.

8 JUDGE ALBERS: Right. I just need a hard copy
9 of your Revised Exhibit 3 so that it can be stamped
10 and given to the court reporter.

11 MR. DICKS: I thought that was done.

12 JUDGE ALBERS: Carla, did you get that?

13 THE REPORTER: No, you have it, I think.

14 JUDGE ALBERS: I am sure it is here somewhere.

15 MR. DICKS: This one is my copy that actually
16 has the testimony that is stricken marked through,
17 but I believe I provided everybody with a copy of
18 the totally redacted version.

19 JUDGE ALBERS: We can get that later then. We
20 can figure that out.

21 Is there anything else for the record then?

22 MR. DICKS: Oh, we didn't wrap up Mr. Lesser's

1 testimony.

2 JUDGE ALBERS: Oh, the additional --

3 MR. ROONEY: I thought we were going to do that
4 tomorrow. We will get the request to admit and we
5 are going to strike through the ones we are not
6 using and give them back to you tomorrow.

7 MR. DICKS: No, I meant his direct testimony
8 and rebuttal testimony. I know I am submitting a
9 revised copy of the rebuttal testimony, but subject
10 to those revisions being made in his direct
11 testimony after the motion to strike, I ask that
12 those be received; haven't heard an objection yet.
13 I just want to get that cleared up.

14 JUDGE ALBERS: Right. I think we admitted his
15 direct testimony, at least the version that was post
16 the motion to strike.

17 MR. DICKS: And again I requested at the time
18 that all of the exhibits that were referred to in
19 the testimony that were not stricken be received
20 into evidence.

21 JUDGE ALBERS: Yes, those are admitted as well.

22 MR. ROONEY: Just for the sake to help maintain

1 the same letter identification he had previously so
2 it won't be alphabetical.

3 MR. DICKS: Right.

4 JUDGE ALBERS: I think that will keep it
5 simple.

6 And as far as the interrogatories you had,
7 Mr. Rooney, those will be mentioned and brought
8 forth tomorrow morning.

9 MR. ROONEY: Right, we will bring it tomorrow
10 morning and any of the DRs that Mr. Dicks wants to
11 present, we will talk about it and have those ready
12 to go too.

13 JUDGE ALBERS: Okay. I have the feeling I am
14 forgetting something but I guess it will keep until
15 tomorrow.

16 MR. ROONEY: Can we go off the record for a
17 second, Your Honor?

18 JUDGE ALBERS: Certainly.

19 (Whereupon there was
20 then had an
21 off-the-record
22 discussion.)

1 JUDGE ALBERS: All right. Then back on the
2 record and we will continue this at 9:00 o'clock
3 tomorrow morning.

4 (Whereupon the hearing
5 in this matter was
6 continued until November
7 13, 2003, at 9:00 a.m.
8 in Springfield,
9 Illinois.)

10 (Whereupon NCC Exhibit 3
11 was marked for purposes
12 of identification as of
13 this date.)

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